

WOMEN'S RIGHTS IN ISLAM

Contains verses of The Holy Qur'an, Traditions of Prophet Muhammad (PBUH), Islamic Law, Views of the eminent scholars, Comparative position of women in non-Muslim societies, etc.

**BY
MUHAMMAD SHARIF CHAUDHRY**

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DEDICATION

This book is dedicated to the wives of Prophet Muhammad (may Allah's peace be upon him), of whom the Qur'an speaks: "The Prophet is closer to the believers than their own selves, and his wives are their mothers..." (33 : 6)

The book is also dedicated to the loving and undying memory of my mother who raised me in the love of Islam. She left for her heavenly abode on April 10, 1984. May her soul rest in eternal peace.

The book is further dedicated to my daughters, Sadia, Alia, Mehreen, and their generation with the hope that they would devotedly carry on the work for the cause of Islam.

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(In the name of Allah, Most Gracious, Most Merciful)

FOREWORD

"O My Lord! Expand me my breast; Ease my task for me; And remove the impediment from my speech, so they may understand what I say" - (Al-Qur'an 20:25-28).

Demands by women for equal rights and equal status with man and the freedom to decide their own careers and life patterns have been a continual theme in western society for the last two hundred years. The American Revolution of 1776 and the French Revolution of 1789 provided perhaps the philosophical basis to the western women for launching a movement for their rights. However the struggle for rights was not that easy. The women had to organize themselves like trade unions by forming societies, clubs and associations. They had to struggle in houses, in offices, in factories, in Parliaments and even in streets. They had to make charters of demands, draft bills of rights, prepare literature pertaining to their rights, make use of the communication media and appeal to the conscience of the relevant quarters. The struggle was not all peaceful. The women had to resort to strikes, agitations, processions and demonstrations. They were abused, teargassed, baton charged, shot at, imprisoned and rats were let loose upon them in prison-cells. No doubt the western woman today has obtained some socio-economic and lego-political rights. But in the process she has lost everything i.e., her home, her family, her peace of mind, her honour and her womanhood - and has accepted additional responsibilities of earning of livelihood by working in factories, farms, offices and organizations side by side with man.

On the contrary, the Muslim woman did not have to struggle for her rights. She did not form any organisation and did not launch any movement. She did not even put up any

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demands for her rights. The great religion al-Islam bestowed innumerable rights on her as bounty. And these rights were conferred on her fourteen hundred years ago when the contemporary civilizations were not even prepared to consider her as a human being. The rights granted by Islam to the woman and the elevated and dignified status which was given to her, are the subject of this book. Bitter criticism and baseless objections made by scholars particularly by non-Muslim writers against Islam on account of unequal treatment of woman in matters of inheritance and evidence, permission to men of contracting upto four contemporaneous marriages, and segregation of woman or *pardah*, have all been analysed and answered. Issues, which have lately generated heated debates, like: whether Islam treats man and woman equally, whether Islam allows a woman to engage in some profession or employment to earn livelihood, whether a Muslim woman has the right to vote and contest for representative offices, whether Islam permits a woman to become the head of state or the chief executive, etc, have been fully discussed.

The reader, especially the western reader does not want to know what a particular Muslim writer tells about the rights of woman in Islam. Instead he wants to learn what the revealed book of Islam says about the women, what Muhammad (PBUH), the Prophet of Islam said and did for the women, and how the Islamic law as developed by the followers of Islam treats the women. It is this consideration which has prompted me to reproduce the relevant verses of the Qur'an and *Ahadith* of the Prophet of Islam. It is again with this objective that I have extensively quoted from the Islamic law and *fiqh* and have also liberally borrowed from the eminent scholars and the renowned authorities. I have taken particular care not to impose on the reader my own thoughts or pre-conceived ideas.

For quoting the verses of the Holy Qur'an I have depended upon the famous translation of the Qur'an by Allama Abdullah Yusuf Ali. For Hadith, I have mainly

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depended on Mishkat-ul-Masabih rendered into English by Maulana Fazlul Karim.

My desire to keep this study within the present limits has forced me not to indulge in unnecessary details about historical developments and women's rights in non-Islamic communities of the modern world.

I feel my labour would be amply rewarded if this humble work creates a little awareness among the concerned circles or brings the woman a little nearer to the ideal status granted to her by Islam.

In the end, I pray to Allah: "O my Lord! Advance me in knowledge"-
(Al-Qur'an 20:114).

March 1, 1991
Sha'aban 13, 1411

Muhammad Sharif Chaudhry
M.A., L.L.B.

INTRODUCTION

It is a matter of great honour for me to write an introduction to this monumental work, not only because it has been authored by my illustrious husband, but also because the subject-matter of this book is of deep interest and concern to my sex.

If all the women of the world die simultaneously leaving behind them only male population, the human race will not survive. On the other hand if all the men of the world die simultaneously leaving behind them only the females, the human race will not come to an end. It would still survive and would continue to survive till Doomsday, because some of the females would have got conceived by the time of the death of all men and they will give birth to male and female children thereby ensuring the continuity of humankind. Such is the importance which nature attaches to the woman. But alas! she has always been treated as an inferior being having little or no rights as compared with man. The modern man calls her his better half, but he is hardly prepared to concede her those rights which he himself enjoys. Through history, the woman has been labeled as being physically weaker than man, more emotional, less reasonable, slower to learn, and dependable. Man, on the other hand, has always been considered logical, rational and objective. Although responsible for instilling civic and religious virtue among the children, she herself has been seen as susceptible to sin. Male chauvinists have always discriminated against woman on the basis of their sex. The occasional woman who did not conform to the social customs and standards laid down by the dominant sex, was stigmatized as a witch or a prostitute and punished.

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Conditions were worse for the women in the past. In the ancient and medieval civilizations like those of Greeks, Roman, Hebrews, early Christians, Hindus, Chinese and Pagan Arabs, the woman had no *locus standi*. Let alone having any rights, she was not even considered to be a human being. She was treated worse than animals. Like a piece of property, she was a marketable commodity and subject of testamentary disposition. The philosophers of antiquity for quite some time continued debating whether a woman is a human being? Whether she possesses a human soul? Whether she had some rights? etc., etc.. In the matters of marriage, divorce, ownership of property, inheritance etc., the women were hardly given any rights. Polygamy was common in almost all societies with no restrictions as to the number of wives a man could have at a time. Birth of a daughter was considered to be a bad omen and a matter of shame in a family particularly among the Pagan Arabs who preferred to dispose her off by burying her alive. Such was the miserable plight of women at the time of the advent of Islam.

Islam elevated the status of women from the level of a mere chattel to the level of a human being. Al-Qur'an, the revealed book of Islam, declares that man and woman proceed from the same stock, they are the members of the same species, and they are born of the same parents. The Qur'an invariably calls man and woman as spouses of each other, companions and helpmates. Besides restoring her human dignity, Islam bestowed on the woman innumerable rights in almost every field of human life. In terms of rights and status, what the modern western woman has achieved today by hectic struggle through agitations, demonstrations, processions, strikes and violent means, is nothing as compared to the rights Islam gave her fourteen centuries earlier without her asking or demanding for them.

The rights bestowed by Islam on the woman and the status granted to her by this great religion is the subject of this book. The book focuses on the rights of woman in her role as mother, wife, daughter and sister. Her rights regarding

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inheritance, ownership of property, marriage, dower, divorce, maintenance, acquisition of education, earning of livelihood, participation in socio-political life of the Muslim *ummah* have been dilated upon in various chapters of the book. Controversial issues like polygamy, segregation of women (*purdah*), equality between sexes, woman's right to seek for the post of head of state etc., have been discussed by the author in an amicable way after considering the arguments for and against. On each topic which has been dealt with in this book, verses of the Qur'an, *Ahadith* of the Prophet of Islam, Islamic law and *Fiqh* and opinions of the great scholars of Islam have been frequently quoted. Comparative position of the non-Muslim women has also been high-lighted in respect of certain rights.

The book is indeed a useful addition to the Islamic literature available on this subject. I hope, it will benefit all; women, men, students, scholars, lawyers, research scholars and writers, who read it.

The Book would, very soon, find its due place in homes, offices and libraries.

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CHAPTER I

RIGHTS AS MOTHER

I - INJUNCTIONS OF THE QUR'AN

Verses of the Qur'an, the revealed book of Islam, pertaining to the rights of woman as mother are:

1. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah and Allah is All-Knowing, All-Wise. (4 : 11)
2. And marry not women whom your fathers married,—except what is past: It was shameful and odious,—an abominable custom indeed. (4 : 22)
3. Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents. Whether one or both of them attain old age in thy life, say not to them a word of contempt, nor repel them, but address them in terms of honour.

And, out of kindness, lower to them the wing of humility, and say: "My Lord! bestow on them Thy mercy even as they cherished me in childhood." (17 : 23 - 24)
4. "(He) hath made me kind to my mother, and not overbearing or miserable; (19 : 32)
5. And We have enjoined on man (to be good) to his parents: In travail upon travail did his mother bear him, and in years twain was his weaning: (hear the command), "Show gratitude to Me and to thy parents: to Me is (thy final) goal. (31 : 14)

6. We have enjoined on man Kindness to his parents: In pain did his mother bear him, and in pain did she give him birth. The carrying of the (child) to his weaning is (a period of) thirty months. At length, when he reaches the age of full strength and attains forty years, he says, "O my Lord! grant me that I may be grateful for Thy favour which Thou hast bestowed upon me, and upon both my parents, and that I may work righteousness such as Thou mayest approve; and be gracious to me in my issue. Truly have I turned to Thee and truly do I bow (to Thee) in Islam." (46 : 15)

II - AHADITH OF THE PROPHET

Ahadith of the Prophet (PBUH) of Islam on the rights of mother are stated as under:-

1. Abu Hurairah reported that a man enquired: O Apostle of Allah! who is the most proper person for my good association? "Thy mother", replied he. Then he asked: Who is next? Thy mother", he replied. Then he asked: Who is next? Thy mother", he replied. He enquired: Who is next? "Thy father", he said. In another narration: he replied, 'Thy mother, and then thy father and then thy nearest relatives and then thy nearer relatives'. (Bukhari, Muslim)
2. Mugirah reported that the Messenger of Allah said: Allah made unlawful to you disobedience to mothers, burying alive of daughters, and refusing help. And he disliked for you frivolous gossips, frequent questions and squandering property. (Bukhari, Muslim)
3. Ibn Omar reported that a man came to the Holy Prophet and said: O Apostle of Allah! I have committed a great sin. Is there any repentance for me? He enquired: Have you got mother? 'No' replied he. He asked: Have you got mother's sister? 'Yes' said he. He said: Then accord her good treatment. (Tirmizi)

4. Muawiyah-b-Ja'hemah reported that Ja'hemah came to the Messenger of Allah! I intend to join a battle and have come to you for consultation. He enquired: Have you got mother? 'Yes' replied he. He said: Then keep near her, because Paradise is at her feet. (Ahmad, Nisai, Baihaqi)

5. Bahaj-b-Hakim reported from his father who from his grandfather who had reported: I asked: O Messenger of Allah! who is to be most obeyed? He said: Your mother. I asked: Who is next? He said: Your mother. I asked: Who is next? He said: Your mother. I asked: Who is next? He said: Your father; and then your nearer relations and then your near relations. (Tirmizi, Abu Daud)

6. Abu Hurairah reported that the Messenger of Allah said: May he be humbled! May he be humbled! May he be humbled! It was questioned: Who, O Apostle of Allah? He said: The one who finds parents in their old age - one of them or both of them, and yet does not enter Paradise. (Muslim)

7. Asma-bint-Abu Bakr reported: My mother, while she was a polytheist during the treaty of the Quraish came to me, I asked: O Messenger of Allah! my mother has come to me while she is ill-disposed (to Islam). Should I show her respect? "Yes" replied he, "show her respect." (Bukhari & Muslim)

8. Abu Tufail reported: I saw the Messenger of Allah dividing meat at Jeerana when a woman approached till she came to the Holy Prophet. He spread out his sheet for her and then she took out her seat thereon. I enquired: Who is she? They replied: She is his mother who suckled him. (Abu Daud)

9. Amr-b-Shuaib reported from his father who from his grandfather that a woman asked: O Messenger of Allah, my womb was a resting place of this son of mine, my breast a drinking place for him and my lap a soothing place for him, but his father divorced me and wishes to snatch him away from me. The Messenger of Allah said: You have got better right to take him till you are not remarried. (Abu Daud, Ahmad)

10. Abu Hurairah reported that a woman came to the Prophet and said: My husband intends to go away with my son while he gave me water to drink and gave me other benefit. The Prophet said: This is your father and this is your mother. Take the hand of any of them you like. He took the hand of his mother and she went away with him. (Abu Daud, Nisai)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

Rights bestowed upon the mother are discussed in the light of the Qur'an and the Traditions of the Prophet (PBUH) in the following paragraphs:-

1. The first and foremost duty of the human kind is to worship and serve Allah. Next to this is the duty of showing kindness and obedience to one's parents. (Al-Qur'an 17:23)
2. It is to be noticed that while enjoining upon man the kindness towards parents, the Qur'an has specially made mention of the services of mother in bearing and bringing up of the child (Al-Qur'an 31:14; 46:15) It shows the importance of the role played by the mother and thus makes her deserve the higher degree of one's obedience as compared to the father. No doubt the Holy Prophet, according to an authentic tradition narrated at serial no. 1 above, told a questioner that the best person for his good treatment was his mother and he repeated it thrice. It is taken from this Hadith that the status attached to the mother in respect of the obedience by the children is at least three times higher than that of the father.
3. The Prophet of Islam (may Allah's peace be upon him) has declared it in unambiguous terms that the paradise lies at the feet of the mother. He, therefore, commanded a companion of him not to participate in Jihad which is incumbent on every able-bodied adult male Muslim, and instead serve his mother. According to another tradition, the Prophet ordained good treatment to the mother and in case of mother's death to the mother's sister as an expiation of a major sin. Yet another Hadith declares disobedience to mothers

unlawful. Good treatment even to a polytheist mother has been ordered. Foster mother also deserves one's good treatment and respect.

4. The Holy Qur'an has made the mothers shareholders in the inheritance of children. In case the deceased leaves a son, the share of the mother would be one sixth and in case he leaves no son and his parents are his heirs, the share of the mother would be one third. (Al-Qur'an 4: 11)
5. In the pre-Islamic 'times of Ignorance', there was a custom among the Arabs that after the death of the father, his wives passed on to his sons as property in inheritance who used to marry them. This cruel custom was abolished by the Qur'an and marriage with mothers was declared unlawful. (Al-Qur'an 4:22)
6. On account of the importance attached by the Qur'an and Sunnah to the parents for one's respect and obedience, it has been deduced by the Muslim jurists that the parents are entitled to maintenance from their children. Under Sunni Law the parents are entitled to maintenance even if they are capable of earning. Shia Law, however, relieves the children of their duty, if the parents are capable of earning.
7. The mother is entitled to the custody (Hizanat) of her male child until he has completed the age of seven years and of her female child until she has attained puberty. The right continues even if she has been divorced by the father of the child unless she marries a second husband - (Mulla).

IV - VIEWS OF THE SCHOLARS

Now we ascertain how the famous scholars of Islam view the position of mother in Islamic Society.

1. Encyclopaedia of Seerah writes: "Woman's position as mother is unique in a Muslim society. She is focus for all the members of the family. She enjoys great esteem and respect from everyone and all come to her to pay their respects on

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important occasions and her opinions and suggestions carry great weight in all family matters."

2. Maulana Fazlul Karim writes: "Thus it is seen that a great stress has been laid by the Qur'an regarding obedience to parents. In Islam, next to the duty to God comes the duty towards parents. Parents are the immediate cause of our birth and without them, we could not have seen the light of the world. Where were we in our infancy, and where would we have been now had the parents not taken sincere care of us? We would have been in their absence left to the mercy of the wind, sun and rain. How patiently parents bear all sorts of hardships, and how joyfully do they sacrifice their comforts in improving children. They spare no pains in procuring food for them, and they acquire the vices of hoarding wealth only for their subsequent use and comforts? For all these reasons, the duty to parents has been placed by the Qur'an and Hadith next to the supreme duty towards Allah. Among parents, mother's place in respect of obedience has been placed much above father as mother shares the major portion of privation for the infant child." (Al-Hadith)

CHAPTER 2

RIGHTS AS WIFE

I - INJUNCTIONS OF THE QUR'AN

Injunctions of the Holy Qur'an regarding the rights of woman as wife are:

1. Permitted to you, on the night of the fasts, is the approach to your wives. They are your garments and ye are their garments. Allah knoweth what ye used to do secretly among yourselves: But He turned to you and forgave you: (2 : 187)
2. Your wives are as a tilth unto you: so approach your tilth when or how ye will: but do some good act for your souls beforehand; and fear Allah, and know that ye are to meet Him (in the Hereafter) and give (these) good tidings to those who believe. (2 : 223)
3. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise. (2 : 228)
4. A divorce is only permissible twice: after that, the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you, (men), to take back any of your gifts (from your wives) except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah; so do not transgress them. If any do transgress the limits ordained by Allah, such persons wrong (themselves as well as others). (2 : 229)

5. There is no blame on you if ye divorce women before consummation or the fixation of their dower: but bestow on them (a suitable gift) the wealthy according to his means, and the poor according to his means;— A gift of a reasonable amount is due from those who wish to do the right things. (2 : 236)

6. O mankind! reverence your Guardian-Lord, Who created you from a single Person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women;— Reverence Allah, through Whom ye demand your mutual (rights), and (reverence) the wombs (that bore you); for Allah ever watches over you. (4 : 1)

7. And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer. (4 : 4)

8. In what your wives leave, your share is a half, if they leave no child; but, if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child. But if ye leave a child, they get an eighth; after payment of legacies and debts. (4 : 12)

9. O ye who believe! ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them,—except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good. (4 : 19)

10. But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, take not the least bit of it back: Would ye take it by slander and a manifest wrong? (4 : 20)

11. Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means.

Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first) (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance): For Allah is Most High, great (above you all). (4 : 34)

12. If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause, their reconciliation: for Allah hath full knowledge, and is acquainted with all things. (4 : 35)

13. It is He Who created you from a single person, and made his mate of like nature, in order that he might dwell with her (in love). When they are united, she bears a light burden and carries it about (unnoticed). When she grows heavy, they both pray to Allah their Lord, (saying); "If Thou givest us a goodly child, we vow we shall (ever) be grateful." (7 : 189)

14. And Allah has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best: will they then believe in vain things, and be ungrateful for Allah's favours.— (16 : 72)

15. And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): Verily in that are Signs for those who reflect. (30 : 21)

16. Let the women live (in 'iddat), in the same style as ye live, according to your means: Annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in

5. There is no blame on you if ye divorce women before consummation or the fixation of their dower: but bestow on them (a suitable gift) the wealthy according to his means, and the poor according to his means;— A gift of a reasonable amount is due from those who wish to do the right things. (2 : 236)

6. O mankind! reverence your Guardian-Lord, Who created you from a single Person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women;— Reverence Allah, through Whom ye demand your mutual (rights), and (reverence) the wombs (that bore you); for Allah ever watches over you. (4 : 1)

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difficulties, let another woman suckle (the child) on the (father's) behalf. (65: 6)

II - AHADITH OF THE PROPHET

Ahadith of Hadrat Muhammad (may Allah's peace be on him) on the rights of the wives are:

1. Abu Omamah reported from the Messenger of Allah who used to say: Next to fear of Allah the believer finds nothing good for him than a virtuous wife. If he bids her, she obeys him; if he looks at her she gives him pleasure; if he gives her a promise, she fulfils it, and if he is absent from her, she guards herself and his property. (Ibn Majah)
2. Abu Hurairah reported from the Holy Prophet who said: When a man has two wives and he does not deal equitably between them, he will come on the Resurrection Day with a side hanging down. (Tirmizi, Abu Daud, Nisai)
3. Hakim-b-Muawiyah from his father reported: I asked: O Messenger of Allah! what right has the wife of one among us got over him? He said it is that you shall give her food when you have taken your food, that you shall clothe her when you have clothed yourself, that you shall not slap her on the face, nor revile (her), nor leave (her) alone except within the house. (Ahmad, Abu Daud, Ibn Majah)
4. Abu Hurairah reported that the Messenger of Allah said: The most perfect of the believers in faith is he who is the best of them in conduct, and the best of you are those who are the best to their wives. [Tirmizi (approved, correct)]
5. Jaber-b-Abdullah reported that the Messenger of Allah said: Fear Allah regarding women. Verily you have married them with trust of Allah and made their private parts lawful with the word of Allah. You have got (rights) over them that they entertain nobody to your beds which you dislike. If they do this, give them a beating without causing injury. They

have got (rights) over you in respect of their food and clothing according to means. (Bukhari and Muslim)

6. Anas reported that the Messenger of Allah said: When a woman says her five (prayers) and fasts her month, and guards her private parts, and obeys her husband, let her enter Paradise by whichever door she likes. (Abu Nayeem in Hilya)
7. Abu Hurairah reported that a man came to the Messenger of Allah and said: I have got a dinar. He said: Spend it for yourself. He said: I have got another. He said: Spend it for your children. He said: I have got another. He said: Spend it for your wife. He said: I have got another. He replied: Spend it for your servant. He said: I have got another. He replied: you know best. (Abu Daud, Nisai)
8. Abu Hurairah reported that the Messenger of Allah said: (As for) a dinar you have spent in the way of Allah, and a dinar you have spent in emancipating a slave, and a dinar you have given to a poor man in charity and a dinar you have spent for your family, the greatest of them in reward is that which you have spent for your family. (Muslim)
9. Abu Hurairah reported that the Messenger of Allah said: Let no believing man hate a believing woman. If he hates one trait of her character, he shall be pleased with another that is within her. (Muslim)
10. Nothing among the choicest blessings of this world is better than a virtuous wife. (Ibn Majah)
11. It is reported by Abdullah bin Umar that during the life time of the Holy Prophet, the companions treated their wives most politely for fear that a Commandment concerning them might be revealed, and not until he had passed away did they begin talking with them freely." (Bukhari)
12. Once Hazrat 'Umar complained that women had grown insolent and sought permission for beating them to set them right. The Prophet granted the permission. The same day seventy women were beaten in their houses by husbands who had long been awaiting such permission. The next day all the

women came to the Holy Prophet's house with bitter complaints. The Holy Prophet called the people together and addressed them: "Today seventy women have visited Muhammad's house — all complaining against the harsh treatment of their husbands. The men who have misbehaved in this manner are certainly not the best among you." (Ibn Majah)

13. In his famous Farewell Address, delivered at Arafat on the occasion of last pilgrimage in 10 A.H., the Prophet Muhammad (peace be upon him) declared: "Well then, people! verily there are rights in favour of your women which are incumbent upon you, and there are rights in favour of you which are incumbent upon them. As to what is incumbent upon them in your regard, is that they should not let your beds be trampled by others than you, should not allow those to enter your houses whom you do not like without your authorization, and should not commit turpitude. If they do commit that, then God has given you permission to reprimand them, to separate yourself from them in beds, and to strike them but not hard. If they abstain and obey you, then it is incumbent upon you to provide their food and dress in accordance with good custom. And I command you to treat women well, because they are like captives in your houses, possessing nothing for themselves, and you, on your part, take them as a deposit from God, and permit yourselves the enjoyment of their persons by means of a word of God. Have therefore the fear of God with regard to women, and I order you to treat them well. Attention! Have I communicated? O God, be witness!" (Ibn Hasham quoted by Dr. Hamidullah)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

In the following paragraphs, the status of woman as wife in the light of the Qur'an and Sunnah, and the rights granted to her in this position by Islam are discussed.

1. About the relationship between the husband and wife the Qur'an says "They are your garments, And ye are their

garments" (2:187). This beautiful description indeed sums up in an excellent way the relation of husband to his wife and the relation of wife to her husband. As one's clothes are close to one and nothing is in between one's clothes and one's body, similarly husband and wife are closely related to each other. As the clothes protect a persons from the heat and cold and from the vagaries of the weather, similarly husband and wife protect each other from the onslaught of social evils and moral vices of base passions, lewdness, fornication, inequity, sexual indulgence etc. The husband and wife are thus for mutual support, comfort and protection, fitting into each other like garments.

2. Again (in 2 : 223), the Holy Qur'an has declared the women as tilth for their husbands. Here the relationship has been declared to be that which exists between a tiller and his tilth, between the cultivator and his field, and between the farmer and his land. As the farmer goes to his field not as a matter of sport or enjoyment but with the serious intention of getting as good produce as he can, so he works hard, sows seed and protects his field and crops from the natural calamities as well as the trespass of human beings and animals. Similarly the husband is required to take this relationship seriously and not to consider his wife as a source of mere enjoyment and pleasure. He should provide her and his children which he gets out of her, as best maintenance as he can and also love and affection, protection and security, and comfort and happiness. Thus the revealed book of Islam, in this verse, has highlighted that aspect of the relationship between husband and wife which deals with the duties of husband towards his wife and children.

3. Islam, for the first time in the history of man on earth, raised the status of woman from mere chattel which was to be owned and possessed and enjoyed like any other object of property, to the status of a human being having the same rights as of man. The Qur'an says:

"And women shall have rights similar to the rights against them, according to what is equitable." (2 : 228)

The Prophet of Islam (peace be upon him) declared: "Fear Allah regarding women. Verily you have married them with the trust of Allah...They have got rights over you in respect of their food and clothing according to means"-(Bukhari, Muslim). Again the Prophet said:

"The most perfect of the believers is he who is the best of them in conduct, and the best of you are those who are the best to their wives" (Tirmizi).

The woman enjoys many rights as wife in her marital life in respect of marriage, divorce, dower, inheritance, maintenance, protection, love and affection etc. These rights would be discussed in detail at the proper place. There is a chapter in the Holy Qur'an entitled "The Women" (Surah An-Nisa), the major portion of which is devoted to the rights and obligations of women, law of inheritance, family life etc. Surah Baqarah, Surah An-Nur, Surah Al-Ahzab and Surah Al-Talaq also deal with subjects pertaining to women and family life to a great extent.

4. The Qur'an enjoins upon the believers to accord good treatment to their women. It says: "Treat them kindly, if you hate them it may be that you dislike a thing while Allah has placed abundant good in it-" (4:19). The best commentry on this verse has been made in a Hadith of the Prophet of Islam who said: "Let no believing man hate a believing woman. If he hates one trait of her character, he shall be pleased with another that is within her-" (Muslim).

5. A woman has absolute right to dower (*Haq Mahr*) from her husband (Qur'an 4:4) and there is no maximum limit on the amount of dower (Qur'an 4:20). She is entitled to inheritance after the death of her husband. If the deceased has no child, the share of the wife in the heritage would be one fourth and in case the husband leaves child after him, the share of his wife or wives would be one-eighth - (Al-Qur'an 4

: 12). She is entitled to maintenance during the subsistence of marriage and in certain circumstances even after the dissolution of the marriage (Al-Qur'an 65 : 6). She has certain legal rights in respect of divorce also, can obtain Khula (Al-Qur'an 2 : 229) and also can seek dissolution of her marriage in certain circumstances (Dissolution of Muslim Marriages Act 1939). An arbiter can be appointed from her side to look after her interest in case of her differences with her husband (Al-Qur'an 4 : 35) She has legal rights of owning property, managing it and disposing it of, without reference to her husband.

6. As a wife, she is the source of comfort and peace for her husband and similarly her husband is a source of comfort, consolation, peace and security for her. Allah has created love and affection between them (Al-Qur'an 30 : 21). Allah blesses the men with children through their wives (Al-Qur'an 16 : 72).

7. From verse 34 of the chapter 4 of the Holy Qur'an and from some Ahadith of the Prophet (peace be upon him), some people have wrongly concluded that Islam has issued an unrestricted licence in the favour of the husbands to resort to beating of their wives. The Western writers have particularly made a lot of fuss on this issue. However, this is absolutely incorrect to presume that the husbands have been empowered to undertake indiscriminate beating of their wives on mere trivialities. Qur'an permits it as a last resort in the form of light punishment in the case of serious defiance and rebellion by the wife. But the Qur'an allows it after the exercise of certain preliminaries like admonition and separation from bed. In spite of this permission, the Prophet of Islam discouraged its exercise except in very extreme cases of lewdness or immoral conduct or rebellion. He also prescribed that the mild punishment may be awarded with small things like tooth-stick but never with whip. Punishment should not be excessive to injure the wife and it should not at all be inflicted on her face.

IV - VIEWS OF THE SCHOLARS

The views of some eminent scholars of Islam about the status of woman as wife are cited below:-

1. Maulana Fazlul Karim in his book 'Al-Hadis' writes: "The ideal of wifehood in Islam is love and affection and not subordination and servitude. She is regarded as the safeguard for husband against sin and not the 'road to inequity', a strong fortress against inroads of the devil and 'not the gate of the devil' a light house of virtue that saves man from shipwreck when tossed by the raging waves of passion, and not the instrument of devil's works, and a great transformer of a brute husband into an angel. A virtuous wife is the best treasure which a man can justly be proud of. She is the queen of the household because the Prophet said that a woman is a ruler over the household of her husband. She forms the greatest factor in the formation of the character of children and in reclaiming husband from falling on slippery ground of immorality. Indeed, she is a partner in life for consolation and peace"

2. Justice Aftab Hussain writes: Marriage confers no right on either party over the property of the other. The legal capacity of the wife is not sunk in that of the husband; she retains the same powers of using and disposing of her property, or of entering into all contracts regarding it, of suing and being sued without his consent, as if she were still unmarried. She can even sue her husband without the intervention of a trustee or next friend and is in no respect under his legal guardianship. (Status of the Women in Islam)

3. Syed Ameer Ali sums up the status of woman as wife in the following words: "On her marriage she does not lose her individuality. She does not cease to be a separate member of society. An ante-nuptial settlement by the husband in favour of the wife is a necessary condition, and on his failure to make a settlement the law presumes one in accordance with the social position of the wife. A Moslem marriage is a civil act, needing no priest, requiring no ceremonial. The contract of marriage gives the man no power over the woman's person, beyond what the law defines, and none whatever upon her goods and property. Her rights as a mother do not depend for their recognition upon the ideosyncrasies of individual

judges. Her earnings acquired by her own exertions cannot be wasted by a prodigal husband; nor can she be ill-treated with impunity by one who is brutal. She acts, if *sui juris*, in all matters which relate to herself and her property in her own individual right, without the intervention of husband or father. She can sue her debtors in the open courts, without the necessity of joining a next friend, or under cover of her husband's name. She continues to exercise, after she has passed from her father's house into her husband's home, all the rights which the law gives to men. All the privileges which belong to her as a woman and a wife are secured to her, not by the courtesies which "come and go," but by the actual text in the book of law. Taken as a whole, her status is not more unfavourable than that of many European women, whilst in many respects she occupies a decidedly better position. Her comparatively backward condition is the result of a want of culture among the community generally, rather than of any special feature in the laws of the fathers." (The Spirit of Islam)

V - HER RIGHTS IN OTHER SOCIETIES

Among the pre-Islamic pagan Arabs, the wife had no *locus standi*. She was taken as a mere chattel like any other household goods and was considered to have no soul. She was kept in the house not for conjugal love and happiness but for satisfaction of lust and passions of the husband.

Among the Athenians, the most civilised and most cultured of all the nations of antiquity, the wife was a mere chattel marketable and transferable to others and subject of testamentary disposition. She was regarded in the light of an evil, indispensable for the ordering of a household and procreation of children.¹

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RIGHTS AS WIFE

shall be to thy husband, and he shall rule over thee." The husband had a proprietary rights over his wife. The property rights of the wife were limited. Her earnings and her property income belonged to her husband. Virginity of brides was highly prized. Intercourse during menses was punishable by death. In ancient Israel, all a man had to do if his wife did not find favour with him, was to write her a bill of divorcement and send her out of his house.

Under Hindu Law, wife is subjected to her husband and does not enjoy any independence with regard to enjoyment or disposition of property. The husband can seize property of his wife at any time on the pretext of extreme necessity. Child marriage was the general practice among the Hindus. Marriages of the minors are contracted by their parents and minor girls after attaining puberty had no right to exercise option of repudiating such marriages.

In a modern and most civilised country like England, wife had no rights regarding property independently of her husband. Under common law, wife had no independent existence or entity. Wife and husband were regarded as one person and entity of wife was merged into that of her husband. She could not acquire, enjoy or alienate property. Law of Property Act, passed in 1925, however, conferred on her some property rights and recognised her as an entity separate from her husband. The Law Reforms Act, 1935, enabled her to enter into contracts, independently of her husband, and sue and be sued.

On the contrary, Islam confers full rights on the woman in her status as wife. She not only enjoys property rights independently of her husband but also can sue and be sued. She does not lose her entity after marriage so much so that she even retains her maiden name unlike the western practice where she changes her name after the name of her husband.

CHAPTER 3

RIGHTS AS DAUGHTER

I - INJUNCTIONS OF THE QUR'AN

Verses of the Qur'an regarding the rights of woman as daughter are quoted below:

1. Allah (thus) directs you as regards your children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. (4 : 11)
2. When news is brought to one of them, of (the birth of) a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has had! Shall he retain it on (sufferance and) contempt, or bury it in the dust? Ah! what an evil (choice) they decide on! (16 : 58-59)
3. Kill not your children for fear of want: We shall provide sustenance for them as well as for you: Verily the killing of them is a great sin. (17 : 31)
4. To Allah belongs the dominion of the heavens and the earth. He creates what He wills (And plans). He bestows (children) male or female according to His will (and Plan), or he bestows both males and females, and He leaves barren whom He will: For He is Full of Knowledge and Power. (42 : 49-50)
5. When the female (infant), buried alive, is questioned- for what crime she was killed; (81 : 8-9)

II - AHADITH OF THE PROPHET

Ahadith of the Holy Prophet on the subject are as follows:-

1. Anas reported that the Messenger of Allah said: Whoever maintains two girls till they attain maturity, he and I will come

on the Resurrection Day like this; and he joined his fingers. (Muslim)

2. Ayesha reported: A woman came to me, while there were two of her daughters with her. She was begging of me, but found nothing from me except one date which I gave her. She divided it between her two daughters and she herself did take nothing out of it. Then she got up and went away. The Holy Prophet came and I informed him (of it). He said: Whoever suffers for any thing on account of these daughters and (still) treats them with kindness, they will be a shield for him from Hell. (Bukhari and Muslim)

3. Ibn Abbas reported that the Messenger of Allah said: If anybody has got a female child, and then does neither bury her alive, nor treats her unjustly, nor prefers his children (meaning male children) to her, Allah will admit him in Paradise. (Abu Daud)

4. Soraqa-b-Malek reported that the Holy Prophet said: Shall I not teach you the best form of charity? - (maintaining) your daughter who has been returned to you, who has got no earning member except you. (Ibn Majah)

5. Ayesha reported: I have seen none more resembling in manners, guidance and conduct (in another narration-in talk and speech) of the Holy Prophet than Fatimah. Whenever she came to him, he used to stand up for her and then take her by the hand, kissed her and would make her sit in his seat. (Abu Daud)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

Rights granted to the woman in the status of daughter by the Qur'an and Hadith are discussed below:

1. The Qur'an, in the verses 58 and 59 of its chapter 16, draws a very vivid picture of the pagan Arabs on the birth of a daughter. According to the Qur'an, if any one of them receives the news about the birth of a daughter, his face turns black

and he is enraged. He starts hiding himself from his people because of the 'evil news'. He asks himself: "Should I bear this insult and keep up with it or should I bury it alive." The Qur'an declares their thinking as evil and abolished this cruel custom. The birth of females was looked upon as a bad omen in the family not only by the heathen Arabs of pre-Islamic era but it is still so in some people in Pakistan. Some curse their luck for the birth of daughters, some blame the wives for their birth and the other blame the husbands for producing daughters. The Qur'an says that Allah creates what He will. He bestows daughters on whom He will and He blesses with sons whom He will. He, even, makes barren whom He will. (42 : 49-50)

Therefore, no body should feel ashamed of or insulted on the birth of a daughter, neither he should blame his luck or anybody else for causing the birth of daughters. Birth of a daughter is a blessing and the Prophet of Islam said: They will be a shield (for parents) for hell. (Bukhari, Muslim).

2. The evil and cruel custom of burying the female children alive or killing them in infancy was abolished by Islam. The daughters were considered to be an economic burden and the poor families used to dispose of them by killing them. The Qur'an made the infanticide a great sin and warned the parents not to do so, since God Who provides them sustenance would also provide for their children. (Al-Qur'an 17:31)

3. According to the well reported traditions, some of which have been reported above, the Prophet Muhammad (peace be upon him) raised the status of daughters and promised high rewards for those who bring up daughters and do not prefer sons over them. He himself set a good example by holding his daughters in high esteem and respect and by according them best treatment. Whenever his daughter Fatimah used to visit him, the Holy Prophet would stand up, kiss her and made her sit in his place.

4. The daughters are entitled to share in inheritance of their fathers, mothers and near relatives. In case the deceased leaves one daughter only, she is entitled to one-half and in case of two

or more daughters, they would get two-third of inheritance. But if the deceased leaves sons and daughters, the share of two daughters would be equal to one son. (Al-Qur'an 4: 11)

5. A father must provide for the maintenance of his infant children, and in absence of nurse the mother is bound to suckle her infant at breast. But the father is not bound to maintain his children if they have got means of their own. If the father is poor and incapable of earning, the mother, if she is rich, is bound to maintain her children. (Hedayah)

6. Slaying of daughters is such a heinous crime that on the day of Judgement, God would not even talk to their murderer. God would simply take evidence of the girl-child who was buried alive and would punish her murderer very severely. (Al-Qur'an 81: 8-9)

IV - VIEWS OF THE SCHOLARS

1. Authors of the Encyclopedia of Seerah write about the position of woman particularly of daughter in pre-Islamic era as under:

"The history of human civilization bears evidence that woman was regarded as an embodiment of depravity, shame and sin in the world. The birth of a daughter so embarrassed a father that he could not raise his head for shame. The in-law relations were looked upon as base, mean and disgraceful. For this reason, the inhuman custom of disposing of daughters by killing them had become common among many nations. Besides the illiterate, ignorant people, the learned scholars and religious leaders also disputed for generations the question whether Allah had granted women a soul. In Hinduism, the woman stood debarred, from being educated in the Vedas. Buddhism did not recognise salvation for one having sex relations with woman. Christianity and Judaism looked upon woman as the source of all the evil committed by man in the world. In Greece, housewives were entitled to receive no education, nor training in culture, nor social rights. Only the

prostitute was entitled to all these things! The condition in Rome, Iran, China, Egypt and other centres of human civilization was not very different." The change brought about by Islam has been discussed by the authors in these words: "It is Islam which revolutionised this state of affairs not only legally and practically but also intellectually. Islam has indeed changed the mentalities of both the man and woman. The concept of giving the woman her rights and a place of honour in society has in fact been created in man's mind by Islam. The slogans of women's right, women's education and women's emancipation that one so often hears these days are in fact an echo of the revolutionary call raised by the Holy Prophet of Islam, who changed man's way of thinking for all time to come. It was the Prophet of Islam who first taught the world that woman is as much a human being as man".

2. Syed Ameer Ali writes: "But the Teacher who in an age when no country, no system, no community gave any right to woman, maiden or married, mother or wife, who, in a country where the birth of a daughter was considered a calamity, secured to the sex rights which are only unwillingly and under pressure being conceded to them by the civilized nations in the twentieth century, deserves the gratitude of humanity." He describes the position of daughter in Islamic Society in these words: As long as she is unmarried she remains under the parental roof, and until she attains her majority she is, to some extent, under the control of the father or his representative. As soon, however, as she is of age, the law vests in her all the rights which belong to her as an independent human being. She is entitled to share in the inheritance of her parents along with her brothers, and though the proportion is different, the distinction is founded on the relative position of brother and sister. A woman who is *sui juris* can under no circumstances be married without her own express consent, "not even by the sultan." On her marriage she does not lose her individuality. She does not cease to be a separate member of society. (The Spirit of Islam)

CHAPTER 4

RIGHTS AS SISTER

I - INJUNCTIONS OF THE QUR'AN

Verses of the Holy Qur'an about the rights of woman as sister are:

1. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to anyone). Thus is it ordained by Allah, and Allah is All-Knowing, Most-Forbearing. (4 : 12)
2. Prohibited to you (For marriage) are: - Your mothers, daughters, Sisters; father's sisters, (4 : 23)
3. They ask thee for a legal decision. Say: Allah directs (thus) about those who leave No descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, who left no child, her brother takes her inheritance: If there are two sisters, they shall have two-thirds of the inheritance (between them); if there are brothers and sisters, (they share), the male having twice the share of the female. Thus doth Allah make clear to you (his law), lest ye err. And Allah hath knowledge of all things. (4 : 176)

II - HADITH OF THE PROPHET

Hadith of the Prophet (PBUH) on this subject is as follows:-

Ibn Abbas reported that the Holy Prophet said: If one brings up three daughters or sisters, teaches them good manners and treats them kindly and lovingly till they no

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longer need his help, Allah will make paradise obligatory for him. One man said: What if he has two? He replied. And he also. Ibn Abbas said that if the people had enquired about one, the Prophet would have said the same thing. (Shariah Sunnah)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

Following rights are conferred by the Qur'an and Sunnah of the Prophet (PBUH) on the woman as sister:

1. According to the Qur'an, the sister is entitled to receive share in inheritance. If the deceased (man or woman) leaves no parents and no child and has a brother or a sister on mother's side (uterine), the sister and brother would get one - sixth each. And if they are more than two, they would share in one-third. (Al-Qur'an 4:12)

If a man dies childless and also is not survived by parents, but leaves behind full or consanguine sister, she would be entitled to one-half of the estate and in case of two or more such sisters, they would share equally in two-third of the estate. But if there are brothers and sisters both, the share of two females would be equal to that of one male - (Al-Qur'an 4 : 176)

2. Marriage with a sister has been prohibited by the Qur'an (4 : 23). Thus the evil custom of marriages of brothers with sisters prevailing in many old civilizations was abolished by Islam.
3. According to Hadith, if someone brings up three or two daughters or sisters, teaches them good manners and treats them kindly, Allah will admit him into paradise.

CHAPTER 5

RIGHTS REGARDING MARRIAGE

I - INJUNCTIONS OF THE QUR'AN

The injunctions of the Holy Qur'an about the rights of woman pertaining to marriage, as contained in its various verses, are quoted as follows:

1. A divorce is only permissible twice: after that, the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives). Except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. (2 : 229)
2. When ye divorce women, and they fulfil the term of their ('Iddat), do not prevent them from marrying their (former) husbands, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and the last day. That is (the course making for) most virtue and purity amongst you, and Allah knows, and ye know not. (2 : 232)
3. If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days: When they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And Allah is well acquainted with what ye do. (2 : 234)
4. If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess. That will be more suitable, to prevent you from doing injustice. (4 : 3)

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5. And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer. (4 : 4)
6. Prohibited to you (For marriage) are:- Your mothers, daughters, sisters; father's sisters, Mother's sisters; brother's daughters, sister's daughters, foster-mothers (who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your Guardianship, born of your wives to whom ye have gone in,- no prohibition if ye have not gone in;- (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-Forgiving, most Merciful;-

Also (prohibited are) women already married, except those whom your right hands possess. Thus hath Allah ordained (prohibitions) against you; except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property,- Desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, ye agree mutually (to vary it), there is no blame on you, and Allah is All-Knowing, All-Wise. (4 : 23-24)

7. Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means.

Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. (4 : 34)

8. This day are (all) things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time,- when ye give them their due dowers, and desire chastity, not lewdness, nor secret intrigues. If anyone rejects

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faith, fruitless is his work, and in the Hereafter he will be in the ranks of those who have lost (all spiritual good). (5 : 5)

9. Marry those among you who are single, or the virtuous ones among your slaves, male or female; if they are in poverty; Allah will give them means out of His grace; for Allah encompasseth all. And He knoweth all things. (24 : 32)

II - AHADITH OF THE HOLY PROPHET

Traditions of the Prophet of Islam on the subject of woman's rights regarding marriage are as follows:-

1. Abu Hurairah reported that the Messenger of Allah said: A previously married woman shall not be married till she gives consent, nor a virgin be married till her consent is sought. They asked; How shall be her consent? He said: If she remains silent. (Bukhari and Muslim)
2. Abu Hurairah reported that the Prophet said: A grown-up girl shall be asked permission about herself. If she is silent, it is her permission and if she declines there shall be no compulsion on her. (Tirmizi, Abu Daud, Nisai)
3. Jaber reported that the Messenger of Allah said: when one of you seeks a woman in marriage and then if he is able to have a look at whom he wishes to marry, let him do. (Abu Daud)
4. Anas reported that the Messenger of Allah noticed a sign of yellow colour on Abdul Rahman-b-Auf. He asked: What is this? He replied: I have married a woman for a measure of 5 dirhams of gold. He said: May Allah bless you. Give a feast even though with a goat. (Bukhari, Muslim)
5. Ibn Abbas reported that a virgin grown-up girl came to the Messenger of Allah and narrated that her father had given her in marriage, which was disliking to her. The Messenger of Allah gave her option. (Abu Daud)

6. Ali reported that the Messenger of Allah prohibited Mu'ta marriage (temporary marriage) with women on the day of Khaiber.... (Bukhari and Muslim)

7. Meswar-b-Makhramah reported that Sobaiata al Aslamiyah was subject of blood after childbirth for some nights after the death of her husband. She came to the Prophet and sought his permission to get married. He gave her permission and then she was remarried. (Bukhari)

8. Ibn Omar reported that the Apostle of Allah forbade Shigar, and Shigar is a man giving his daughter in marriage on condition that another would give his daughter in marriage to him, and that there would be no dower between them... (Bukhari, Muslim)

9. Ayesha reported that the Apostle of Allah said: Whatever is unlawful by reason of consanguinity is unlawful by reason of fosterage. (Bukhari)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

Rights conferred on a Muslim woman pertaining to marriage are discussed in the light of the Qur'an and Sunnah of the Prophet (PBUH) as under:-

1. A Woman has got as much right to marry as a man has. The Qur'an says. "Marry those among you who are single"-(24 : 32). The Arabic word Ayyama' means single or solitary. A single person, may be a man or a woman, should be married. He or she may be single on account of having not yet married or on account of dissolution of his or her marriage by divorce or by death of the other spouse. Whatever may be the reason for being single, he or she has the right to marry or remarry. Even poverty is no excuse or justification to keep an unmarried man or woman away from marriage, as the Qur'an says in this very verse "If they are in poverty, Allah will give them means out of His grace."

2. The woman has been granted as much freedom in the choice of her husband as the man has been granted in choosing his wife. Nobody has any right to give her away in marriage without her consent. A tradition reported by Abu Hurairah in Bukhari and Muslim states that the Prophet (May Allah's peace be upon him) said: "A previously married woman (whose marriage is dissolved) shall not be married till she gives consent nor a virgin be married till her consent is sought... and her silence is her consent." No compulsion or coercion can be exercised to force a woman into marriage.
3. A minor girl, when given in marriage by her guardian, has the option to repudiate the marriage when she attains puberty. The Prophet of Islam annulled the marriage of a girl who had been given in marriage by her father, since she disliked it (Bukhari). However, repudiation must be made immediately after she attains puberty and before cohabiting with the husband.
4. Islam permits a divorcee or a widow to remarry. Al-Qur'an says: "And when you have divorced women and they reach their term, place not difficulties in the way of their marrying their husbands"- (2 : 232). About the widow's right of second marriage the Qur'an says, "When they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner-" (2 : 234) According to a Tradition reported in Bukhari, Prophet Muhammad (May Allah's peace be upon him) permitted a widow Sobaiata-al-Aslamiyah to contract second marriage.
5. Islam confers an unfettered right on a woman to obtain dower from her husband. The Qur'an says: "And give the women (on marriage) their dower as a free gift"- (4 : 4) For details see chapter on dower.
6. Islam also gives the right to a woman to seek divorce from her husband, e.g., by Khula or by dissolution of marriage in certain situations. For details see chapter on divorce.

7. The woman is entitled to have maintenance from her husband. See chapter on maintenance, for details.
8. Prohibited degrees of marriage (where man and woman cannot marry on account of close relationship or on account of certain legal disability) have been mentioned in the Qur'an in the verses 22, 23, 24 and 25 of its chapter 4. The Prophet of Islam also prohibited the union of males with certain females in some situations.
9. Prophet Muhammad (May Allah's peace be upon him) prohibited temporary marriages (Mu'ta) and exchange marriages (Shigar), thus protecting the rights of females against evil and oppressive customs.
10. Woman also enjoys certain rights and protection in case of her husband's polygamy. For details, please see chapter on polygamy.
11. A Muslim male is permitted to marry a woman of those who received the scripture - Ahle Kitab like Jews and Christians - (Al-Qur'an 5 : 6)

IV - VIEWS OF THE SCHOLARS

Views of some eminent scholars regarding mutual rights of the contracting parties in marriage are cited as under:-

1. Maulana Fazl-ul-Karim, in 'Al-Hadith', writes about Marriage in Islam. "A Muslim marriage is a civil contract based on mutual consent of the bride and bridegroom, as distinguished from the sacramental form of marriage. Most of the incidents of contract are consequently applicable to such a marriage, for example, consideration of marriage in the form of dower, breach of the contract by divorce, giving of legal rights and obligations on the contractual parties, and bestowing no greater power on the husband than what the contract provides in a lawful manner. A Muslim marriage requires no priest and no sacramental rights. At best, the registration of mutual consent may be done. A woman has got

absolute right in her acquired properties before and after her marriage. In addition, she has a distinct lien upon her husband's property for her ante-nuptial settlements."

2. Abdul Hamid Siddiqi writes about the institution of marriage. "Marriage is a social institution as old as the human race itself. It may be defined as a relation between a man and a woman which is recognised by custom or law and involves certain rights and duties, both in the case of the parties entering the union, and in case of the children born of it. Marriage has thus two main functions to perform: it is the means adopted by human society for regulating relations between the sexes; and it furnishes the mechanism by means of which the relations of a child to the community is determined."

3. Justice (retd.) Aftab Hussain in his book "Status of Woman in Islam", writes: "Regarded as a social institution, marriage, under the Muslim Law is essentially a civil contract. Its validity depends upon proposal on one side and acceptance by the other. The law does not insist upon any particular form in which the contract should be effected and completed. Before the promulgation of the Family Laws Ordinance which provides for compulsory registration of marriage it was not necessary in Pakistan that the union should be evidenced by any writing.

A marriage-contract, as a civil institution, rests on the same footing as other contracts. The parties retain their personal rights against each other as well as against strangers; and according to the majority of schools, have power to dissolve the marriage tie, should circumstances render this desirable."

V - ISLAMIC LAW AND FIQH

Rules and regulations of marriage and mutual rights of the husband and wife under the Islamic Law and Fiqh are:

1. *Nikah*, Or *Aqd* which is the Arabic word equivalent of English word "marriage", means uniting or union. Marriage

has been defined in various ways. According to Hedaya, "Marriage is a legal process by which the sexual intercourse and procreation and legitimation of children between man and woman is perfectly lawful and valid." In the words of Ameer Ali, "marriage under Muhammadan law is essentially a civil contract. Its validity depends on proposal on one side and acceptance on the other". According to Baillie's digest, "marriage is a contract for the purpose of legalising sexual intercourse and procreation of children." Mahmood J. observes: "Marriage according to Muhammadan Law is not a sacrament but a civil contract. All the rights and obligations it creates arise immediately and are not dependent on any condition precedent such as the payment of dower by a husband to wife." Mulla says: "Marriage is defined to be a contract which has for its object the procreation and legalising of children."

2. Every adult Muslim of sound mind can enter into a marriage contract. The contracting parties must be acting under their free will and consent. When consent to a marriage has been obtained by force or fraud, the marriage is invalid unless it is ratified. Where consent to the marriage has not been obtained, consummation will not make the marriage valid. Lunatics and minors may be validly married through their guardians.

Views differ regarding the age of puberty. Abu Hanifa fixes the age of puberty in case of boys at 18 years and in case of girls at 17 years. According to Abu Yusuf, it is 15 years for both. Hedaya places the earliest period of puberty in respect of a boy at 12 years and in respect of a girl at 9 years. The Child Marriage Restraint Act, 1929, has fixed the age of puberty for male at 18 years and for female at 16 years.

3. Essentials of a marriage have been beautifully laid down by Mulla in these words: It is essential to the validity of a marriage that there should be a proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence or

hearing of two male or one male and two female witnesses, who must be sane and adult Muhammadans. The proposal and acceptance must both be expressed at one meeting; a proposal made at one meeting and an acceptance made at another meeting do not constitute a valid marriage. Neither writing nor any religious ceremony is essential.

However in Pakistan, marriage is to be registered with Nikah Registrar under Sec. 5 of the Muslim Family Laws Ordinance, 1961.

According to Shia Law, witnesses are not necessary at the time of marriage but they are required at the time of divorce.

Another important essential of a valid marriage is that the female with whom a male wants to marry should not be one among the prohibited degrees of marriage on the basis of consanguinity, affinity or fosterage.

4. A Muslim male can contract a marriage with a Kitabia woman i.e. Jew or Christian. But a Muslim woman cannot marry a Kitabi man i.e. Christian or a Jew; she can only marry a Muslim. However a Muslim male or female cannot marry a non-believer or idolator.

5. A valid marriage confers upon the wife right of dower, maintenance and residence in her husband's house. She has also right to visit or be visited by her blood relations. However, it imposes on her the obligation to be faithful and obedient to her husband, to admit him to sexual intercourse and to observe the *Iddah* on dissolution of marriage by divorce or husband's death. It also creates between the parties prohibited degrees of relationship and reciprocal rights of inheritance. So a valid marriage creates mutual rights and obligations for both the husband and wife.

VI - LAW IN PAKISTAN

1. The Muslim Family Laws Ordinance, 1961, requires the registration of marriages. Section 5 of this Ordinance reads:

- (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.
- (2) For the purpose of registration of marriages under this Ordinance, the Union Council shall grant licences to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one ward.
- (3) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance, be reported to him by the person who has solemnized such marriage.
- (4) Whoever contravenes the provisions of subsection (3) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

2. The Dowry and Bridal Gifts (Restriction) Act, 1976 was passed in 1976 to restrict the evil of Jahez (dowry) which is basically a Hindu Custom but unfortunately it is firmly established in our society with the result that it has become extremely difficult for a man of average means to wed his daughters: The Act provides:-

- (1) Neither the aggregate value of dowry and presents given to the bride by her parents nor the aggregate value of bridal gifts or of presents given to the bridegroom shall exceed five thousand rupees (Sec. 3)
- (2) All property given as dowry or bridal gifts and all property given to the bride as a present shall vest absolutely in the bride and her interest in the property however derived shall hereafter not be restrictive, conditional or limited. (Sec. 5)
- (3) The total expenditure on a marriage, excluding the value of dowry, bridal gifts and presents, but including the expenses on mehndi, baarat and

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walima, incurred by or on behalf of either party to the marriage shall not exceed two thousand and five hundred rupees (Sec. 6)

- (4) The parents of each party to a marriage shall furnish to the Registrar lists of dowry, bridal gifts and presents given or received in connection with the marriage. [Sec. 8(1)]
- (5) The parents of each party to a marriage shall furnish to the Registrar the details of expenditure incurred by them on the marriage within one week. [Sec. 8(4)]
- (6) Whoever, contravenes or fails to comply with, any provision of this Act or the rules made thereunder, shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both, and the dowry, bridal gifts or presents given or accepted in contravention of the provisions of this Act shall be forfeited to the Federal Government to be utilized for the marriage of poor girls in such a way as may be prescribed by rules made under this Act. (Sec. 9)

VII - MARRIAGE IN OTHER SOCIETIES AND REFORMS BY ISLAM

All societies have rules or shared patterns of behaviour that regulate sexuality, birth and child rearing. Marriage is the institution that encompasses these rules and patterns of behaviour.¹

There are various forms of marriage. Monogamy is a marriage between two individuals, one male and one female. Polygamy is marriage between three or more individuals. If one male is married to more than one female it is polygyny. If one female is married to more than one male it is known as

1. Encyclopedia Americana.

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polyandry. In case of group marriage, two or more males are married to two or more females. Exogamy is marriage outside group, while marriage within the group is known as endogamy.

The institution of marriage has existed in one form or the other throughout human civilisation. Various customs and rituals have come to be associated with marriage. Among the warlike tribes of the antiquity there was a custom of wife capture whereby a woman was captured forcibly and made wife against her and her family's will. Much social and military honour was attached to this form of marriage. System of wife purchase was prevalent in many societies and it survives even today in some societies. It was there in Roman civilization and under many others. According to the system, a woman was purchased and made wife. This system also helped the development of polygyny among the affluent classes. In some societies like Hindu society, substantial amount of *Jahez* or dowry is given by the family of the bride to the bridegroom. Since the Hindu customary law deprives the daughters from inheritance, the daughters are given huge dowries at the time of their marriage. Among some nations, marital arrangements provide for the exchange of women without any payment. One man gives his sister in marriage to the other man who gives his sister in marriage to him.

In many communities of the world a system of arranged marriages exists in which choice of the bridegroom and bride does not matter, neither their consent is taken particularly that of the bride. In some cases even the groom and the bride have not seen each other before marriage and they meet each other for the first time at the wedding ceremony. In almost all societies, marriage has become a publically celebrated ceremony involving many socio-religious customs, formalities and rituals. These rituals, more than often, cost heavily in terms of time and money. Economic burden generally falls more heavily on the family of the bride who provides not only rich feasts to the groom and his party but also gives large dowry to the bride which she takes to her husband's house.

RIGHTS REGARDING MARRIAGE

Thus we see that in most of the rituals, ceremonies and forms of marriage, the females are generally at a disadvantage.

Islam abolished many evil customs and rituals connected with marriage thereby redeeming the position of the woman. A brief resume of the reforms introduced by Islam with regard to marriage is given as follows:-

1. System of exchange marriages, bride purchase and bride capture was abolished by Islam.
2. No *Jahez* or dowry is to be given by the family of the bride under compulsion. On the other hand the husband has to give *Mahr* or dower to the wife compulsorily.
3. It is not obligatory on the family of the bride to provide luxurious feasts or meals to the groom and his party. On the other hand, it is obligatory on the bridegroom to host a feast for his friends and relations to celebrate his marriage. According to some well known traditions, the Holy Prophet enjoined his followers and companions to host marriage-feast or *walima*, how much simple it may be, to entertain their friends and relations when they marry the women.
4. What to speak of male, even a female cannot be forced into marriage. Marriage has to be contracted with consent and even the consent of the girl has to be obtained.
5. If a minor girl is given in marriage by her guardian, she can exercise her option and repudiate the marriage when she attains puberty.
6. Man and woman can look at each other before marriage and can express or communicate their liking or disliking to the proposal.
7. Certain marital alliances were forbidden as unlawful; for example marriages between brother and sisters, parents and children etc. In some ancient societies, incest marital relationships had existed which have been strongly condemned by the Qur'an as an evil way.

WOMEN'S RIGHTS IN ISLAM

8. Marriage in Islam is a very simple affair. No elaborate and expensive rituals or ceremonies are held. One of the parties proposes and the other accepts. A marriage is contracted in the presence of two witnesses. A marriage feast is to be hosted by the husband.

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CHAPTER 6

RIGHTS REGARDING DOWER

I - INJUNCTIONS OF THE QUR'AN

Woman's unconditional and unrestricted rights to receive dower (*Mahr*) from her husband have been guaranteed by the following verses of the Qur'an:

1. There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (a suitable gift) the wealthy according to his means, and the poor according to his means;— a gift of a reasonable amount is due from those who wish to do the right things. (2 : 236)
2. And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (is due to them), unless they remit it. Or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness, and do not forget liberality between yourselves, for Allah sees well all that ye do. (2 : 237)
3. And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer. (4 : 4)
4. But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, take not the least bit of it back: Would ye take it by slander and a manifest wrong? (4 : 20)
5. Also (prohibited are) women already married, except those whom your right hands possess. Thus hath Allah ordained (Prohibitions) against you: Except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property,— desiring chastity, not lust. Seeing

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that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, ye agree mutually (to vary it), there is no blame on you. And Allah is All-Knowing, All-Wise. (4 : 24)

6. O Prophet! We have made lawful to thee thy wives to whom thou hast paid their dowers. (33 : 50)
7. And there will be no blame on you if ye marry them on payment of their dower to them. (60 : 10)

II - AHADITH OF THE PROPHET

Ahadith of the Prophet Muhammad (may peace be upon him) on the rights of woman regarding dower are as under:-

1. Omme-Habibah reported that she was the wife of Abdullah-b-Jahash who died in the land of Abyssinia, and then the Negus gave her in marriage to the Prophet and took from him a dower of 4000 (in another narration 4000 dirhams). Then he sent her to the Prophet with Shurahbil-b-Hasanah. (Abu Daud, Nisai)
2. Anas reported that the Messenger of Allah emancipated Safiyyah and married her and made her emancipation a dower... (Bukhari and Muslim)
3. Anas reported that Abu Talhah married Omme Solaim and the dower between them was Islam. Omme Solaim had accepted Islam before Abu Talhah who sought her in marriage. She said: I have surely accepted Islam; but if you accept Islam, I shall marry you. So Abu Talhah accepted Islam and it was their dower between them. (Nisai)
4. Oqbah-b-'Amer reported that the Messenger of Allah said: The most equitable of the conditions (of marriage) is that you should fulfil that (Dower) with which you have made private parts lawful. (Bukhari and Muslim)
5. Jaber reported that the Messenger of Allah said: whoso gives two handful of barley or dates as dower of his wife has rendered (marriage) lawful. (Abu Daud)

6. Sahl-b-Sa'ad reported that a woman came to the Messenger of Allah and said: O, Messenger of Allah, I offer myself to you. She then kept standing for a long time. A man got up and said; O, Messenger of Allah! marry her to (me)...The Prophet said: Have you got with you anything which we may give to her as dower? He said; I have nothing but this trouser of mine. The Prophet said: Seek, though it be a ring of iron. Then he searched but did find nothing. The Prophet asked: Have you got any portion of the Qur'an with you? 'Yes', said he 'such and such a verse.' He said: I give her in marriage to you for what is with you from the Qur'an (So teach her something from the Qur'an). (Bukhari, Muslim)

7. Hazrat Umar once addressed the people in the Mosque of the Prophet: O People! why have you started fixing the dowers of women at fantastically higher amounts, while the Messenger of Allah had never fixed the dower of any of his wives at an amount exceeding four hundred Dirhams. Beware! I should not hear in future that any of you has fixed dower exceeding 400 dirhams. He then descended from the pulpit. There and then came a woman of Quraish and said: O Umar! Have not you heard the word of God (in Al-Qur'an 4 : 20). Allah says. Even if you have given a big treasure to a woman, do'nt take back anything out of that. Hazrat Umar at once returned, withdrew his order and announced: Any one of you can fix as much dower as he pleases. I can't stop him. (Tafsir Ibn Kathir)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

The Qur'an and Sunnah have laid down the following rules and regulations regarding *Haq Mahr* or dower the payment of which by the husband to the wife is obligatory.

1. Payment of *Haq Mahr* (dower) to his wife is obligatory on the husband. It is an essential part of marriage. The Qur'an says: "O Prophet! We have made lawful to thee thy wives to whom thou has paid their dowers"-(33 : 50). At another place the Qur'an says:....And there is no blame on you to marry them when you give them their dowries"- (60:10). However, the

marriage is not invalid if dower is not paid or contracted or fixed before marriage. It is apparent from verse No. 236 of chapter 2 of Al-Qur'an which reads: "There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them a suitable gift." Even in such case something is to be paid.

2. The amount of dower which the bridegroom has to give to his bride has not been fixed by the Qur'an or Sunnah. It depends entirely on the agreement of the contracting parties. The Qur'an says: "...The wealthy according to his means and the poor according to his means; a gift of a reasonable amount is due from those who wish to do the right things"- (2 : 236)

3. There is no minimum or lower limit of dower fixed by law, though some jurists opine that it should not be less than ten dirhams. It may be in the form of cash or in kind. The Prophet (PBUH) did not fix any minimum. According to the well reported Traditions of the Prophet of Islam, even a handful of barley or dates or even an iron ring may be sufficient provided the bride agrees to accept it. The Messenger of Allah himself married Hazrat Safiyyah and her emancipation was her dower. Omme Solaim agreed to marry Abu Talha on the condition that he should accept Islam. Abu Talha fulfilled the condition and his acceptance of Islam was declared to be *mahr* or dower of Omme Solaim. In another case, the teaching of one or two verses of the Holy Qur'an by the husband to the wife was declared to be an adequate *Mahr* for the bride.

4. No maximum or upper limit of *mahr* or dower has been fixed by Islam either. The Qur'an says: "But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, take not the least bit of it back"- (4 : 20). From this verse the jurists of Islam have deduced that the right of a woman to demand any amount of dower as a condition of her agreeing to marriage is not restricted by the Islamic Law. Hazrat Umar, the second pious caliph of Islam, once thought of fixing the upper limit of

dower on the complaint of the men that the women were demanding fantastic amounts; but he was dissuaded by a woman who drew his attention to verse of the Holy Qur'an quoted above.

5. If a person divorces his wife before touching her and before appointing any amount of dower for her, he has been directed to make provision for her according to his means (Al-Qur'an 2 : 236). But if he divorces her before touching her and after fixing the amount of dower for her, he is bound to give half of the amount of dower which has been fixed. However, if the woman agrees to forgo her rights of accepting this half dower or the man shows generosity in giving her full dower, such an accord is permitted. (Al-Qur'an 2 : 237)

6. The men should give to their wives their dower willingly. But if the women of their own accord agree to remit the whole or part of their dower, the husbands are welcome not to pay it (Al-Qur'an 4 : 4). Hazrat Umar and Qazi Shuraih have decreed that if a wife remits the dower but later on demands it, the husband shall be compelled to pay it because the very fact that she demands it is a clear proof that she did not remit it of her own free will.

7. According to verse No. 24 of Surah An-Nisa, dower has to be paid as a duty.

IV - ISLAMIC LAW AND FIQH

The rules and regulations regarding dower or *Mahr* by Islamic Law and Fiqh are:

1. 'Mahr' is normally translated as dower though it is distinguishable from dower as is understood in the European countries and also from presents given at the time of marriage and *Jahez* (Mahmood Ahmad v. Mohammad Nawaz Siddiqi, P.L.D. 1975 Lah 739). But for the sake of convenience and also in view of the fact, that there is no proper equivalent of *Mahr* in English language, we would like to use the word dower as it has been commonly in vogue.

2. Dower has been defined in different ways. According to one definition, it is a consideration for the surrender of person by the wife. According to Ameer Ali, dower is a consideration for wife's sole and exclusive use and benefit. Mulla defines dower as "a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage."

3. Dower is essential in marriage, so much so that in case it is not fixed, even then the wife is entitled to its payment according to the standard in the family. Wife has the right to remit the dower or to accept the reduced amount or to postpone her demand for its payment. According to Mulla, the amount of dower may be fixed either before or at the time of marriage or after marriage and can be increased at any time by mutual consent.

4. According to Hedaya, "marriage is valid although no dower has been mentioned because nikah signifies a contract of union which is fully accomplished by the performance of the marital rites. Dower is obligatory as a mark of respect for the subject, therefore its mention is not essential to the validity of the marriage. For the like reason, a marriage is valid although the man agrees to the marriage on the special condition that there should be no dower. In such case the condition would be void but the marriage would be valid." Fatawa-e-Qazi Khan says: "Dower is so essential to marriage that even if it was not mentioned at the time of the marriage or marriage contract, the law will presume by the virtue of contract itself." It is so fundamental a feature of the Islamic Law of Marriage that even if the woman agrees to forego all her right to dower before marriage or agrees to marry without any dower, such agreement would be invalid, but the marriage would be valid.

5. The object of dower is three-fold. Firstly, it would be a check on the arbitrary exercise of the power of divorce by the husband. Secondly, it would restrain the husband to indulge in polygamy. Thirdly, it would work as an obligation imposed

upon the husband as a mark of respect to the wife. In *Abdul Qadir v. Salima*, Justice Mahmood observed: "The marriage contract is easily dissoluble, and the freedom of divorce and the rule of polygamy place the power in the hands of the husband which the Law-giver intended to restrain by rendering the rules as to payment of dower stringent on the husband."

6. As stated earlier, the Shariah has not fixed any minimum or maximum amount of dower. It is fixed according to the means of the husband, at the pleasure of the contracting parties and in view of socio-economic conditions and precedents and customs in the family.

7. Dower is of two types: one called "prompt dower" (*Mahr-i-Mu'ajjal*) which is payable on demand and the other called "deferred dower" (*Mahr-i-Mu'wajjal*) which is payable on dissolution of marriage by death or divorce. The jurists are agreed on the point that the wife can refuse to perform her marital obligations unless prompt dower is paid.

8. If the amount of dower is fixed in the marriage contract, the dower is called specified dower. When the amount is not fixed, the wife is entitled to "proper" or "customary" dower (*Mahr-i-Misl*), which is determined keeping in regard the amount of dower settled upon other females of her father's family.

9. Dower is a debt and the widow is entitled alongwith other creditors of her deceased husband, to have it satisfied out of his estate. However, this debt is an unsecured debt and ranks after secured creditors. But it has priority over legacies and rights of heirs.

V - LAW IN PAKISTAN

Section 10 of the Family Laws Ordinance, 1961 provides:

Where no details about the mode of payment of dower are specified in the *nikahnama*, or the marriage contract, the

entire amount of the dower shall be presumed to be payable on demand.

VI - DOWER IN OTHER NATIONS

No woman of any other nation except a Muslim woman has absolute rights of getting *Mahr* or dower from her husband. In none of the communities besides the Islamic Ummah, a husband is under legal obligation to give bridal gift or dower to his wife. Though the Jewish law insisted upon the specification of dower in the contract of marriage and considered the marriage without it as invalid, yet the dower settled on the wife was never made over to her for her exclusive use and enjoyment. She got the right over dower when her marriage was dissolved either by the death of her husband or by divorce.¹ No other law of any ancient, medieval or modern nation makes it incumbent or obligatory on a husband to make payment of any dower to his wife. It is only Islam which has conferred absolute rights on the woman to demand as much dower from her husband as she desires (there being no upper limit), to acquire it at her discretion and use and enjoy it according to her wishes. We have already discussed at length the various legal aspects of *Mahr* (dower).

1. Ameer Ali.

CHAPTER 7

RIGHTS REGARDING DIVORCE

I - INJUNCTIONS OF THE QUR'AN

Rights regarding divorce are bestowed upon the woman by the Holy Qur'an in its following verses:-

1. For those who take an oath for abstention from their wives, a waiting for four months is ordained; If then they return, Allah is Oft-Forgiving, Most Merciful. But if their intention is firm for divorce, Allah heareth and knoweth all things. (2 : 226-227)
2. Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what Allah hath created in their wombs, if they have faith in Allah and the last day. And their husbands, have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise. (2 : 228)
3. A divorce is only permissible twice: after that, the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives). Except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah; so do not transgress them. If any do transgress the limits ordained by Allah, such persons wrong (themselves as well as others). (2 : 229)

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4. So if a husband divorces his wife (irrevocably), he cannot, after that, remarry her until after she has married another husband and he has divorced her. In that case there is no blame on either of them if they reunite, provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah, which he makes plain to those who understand. (2 : 230)
5. When ye divorce women, and they fulfil the term of their (*Iddat*), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them or to take undue advantage; if anyone does that, he wrongs his own soul. Do not treat Allah's signs as a jest, but solemnly rehearse Allah's favours on you, and the fact that he sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things. (2 : 231)
6. When ye divorce women, and they fulfil the term of their (*Iddat*), do not prevent them from marrying their (former) husbands, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and the Last Day. That is (the course making for) most virtue and purity amongst you, and Allah knows, and ye know not. (2 : 232)
7. For divorced women maintenance (should be provided on a reasonable scale), this is a duty on the righteous. (2 : 241)
8. If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things. (4 : 35)
9. And for those who launch a charge against their spouses, and have (in support) no evidence but their own, — their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth. And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie. But it would avert the punishment from the wife, if she bears

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witness four times (with an oath) by Allah, that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth. (24: 6-9)

10. If any men among you divorce their wives by *Zihar* (calling them mothers), they cannot be their mothers: None can be their mothers except those who gave them birth. And in fact they use words (both) iniquitous and false: but truly Allah is one that blots out (sins), and forgives (again and again). But those who divorce their wives by *Zihar*, then wish to go back on the words they uttered, - (it is ordained that such a one) should free a slave before they touch each other: This are ye admonished to perform: and Allah is well-acquainted with (all) that ye do. And if any has not (the wherewithal), he should fast for two months consecutively before they touch each other. But if any is unable to do so, he should feed sixty indigent ones. This, that ye may show your faith in Allah and his Apostle. Those are limits (set by) Allah. For those who reject (Him), there is a grievous Penalty. (58: 2-4)

11. O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, Except in case they are guilty of some open lewdness. Those are limits set by Allah: and any who transgresses the limits of Allah, does verily, wrong his (own) soul: thou knowest not if perchance Allah will bring about thereafter some new situation. Thus when they fulfil their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endued with justice, and establish the evidence (as) before Allah. Such is the admonition given to him who believes in Allah and the Last Day: and for those who fear Allah, He (ever) prepares a way out. (65: 1-2)

II - AHADITH OF THE HOLY PROPHET

Ahadith of Hadrat Muhammad (peace be upon him) about the rights of woman in respect of divorce are:

1. Ibn Umar reported that the Apostle of Allah said: The most detestable of lawful things near Allah is divorce. (Abu Daud)
2. Mu'az-b-Jabal reported that the Messenger of Allah said: O Mu'az: God created nothing on the face of the earth more dear to Him than emancipation (of slaves) and God created nothing on the face of the earth more disliking to Him than divorce. (Darqutni)
3. Abdullah-b-Umar reported that he divorced his wife while she was in menstruation. Umar mentioned it to the Prophet. The Prophet became enraged at it and said: Take her back and keep her till she becomes pure and then menstruates and then becomes pure. If it appears to him to divorce her afterwards, let him divorce her while she is pure before he touches her. This is the period of waiting while Allah enjoins for the divorce of women. (Bukhari, Muslim)
4. Mahmud-b-Labeed reported that the Messenger of Allah was informed about a man who gave three divorces at a time to his wife. Then he got up enraged and said: Are you playing with the book of Almighty and Glorious Allah while I am (still) amongst you? So much so that a man got up and said: shall I not kill him. (Nisai)
5. Ayesha reported: I heard the Messenger of Allah say: There is no divorce and no emancipation by force. (Abu Daud, Ibn Majah)
6. Ayesha reported that the Messenger of Allah gave us option and so we chose Allah and His Apostle... (Bukhari, Muslim)
7. Ibn Abbas reported that the wife of Sabet-b-Qais came to the Holy Prophet and said: O Messenger of Allah! As for him I donot blame him about his character and piety but I dislike

witness four times (with an oath) by Allah, that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth. (24 : 6-9)

10. If any men among you divorce their wives by *Zihar* (calling them mothers), they cannot be their mothers: None can be their mothers except those who gave them birth. And in fact they use words (both) iniquitous and false: but truly Allah is one that blots out (sins), and forgives (again and again). But those who divorce their wives by *Zihar*, then wish to go back on the words they uttered, - (it is ordained that such a one) should free a slave before they touch each other: This are ye admonished to perform: and Allah is well-acquainted with (all) that ye do. And if any has not (the wherewithal), he should fast for two months consecutively before they touch each other. But if any is unable to do so, he should feed sixty indigent ones. This, that ye may show your faith in Allah and his Apostle. Those are limits (set by) Allah. For those who reject (Him), there is a grievous Penalty. (58 : 2-4)

11. O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, Except in case they are guilty of some open lewdness. Those are limits set by Allah: and any who transgresses the limits of Allah, does verily, wrong his (own) soul: thou knowest not if perchance Allah will bring about thereafter some new situation. Thus when they fulfil their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endued with justice, and establish the evidence (as) before Allah. Such is the admonition given to him who believes in Allah and the Last Day: and for those who fear Allah, He (ever) prepares a way out. (65 : 1-2)

II - AHADITH OF THE HOLY PROPHET

Ahadith of Hadrat Muhammad (peace be upon him) about the rights of woman in respect of divorce are:

1. Ibn Umar reported that the Apostle of Allah said: The most detestable of lawful things near Allah is divorce. (Abu Daud)
2. Mu'az-b-Jabal reported that the Messenger of Allah said: O Mu'az: God created nothing on the face of the earth more dear to Him than emancipation (of slaves) and God created nothing on the face of the earth more disliking to Him than divorce. (Darqutni)
3. Abdullah-b-Umar reported that he divorced his wife while she was in menstruation. Umar mentioned it to the Prophet. The Prophet became enraged at it and said: Take her back and keep her till she becomes pure and then menstruates and then becomes pure. If it appears to him to divorce her afterwards, let him divorce her while she is pure before he touches her. This is the period of waiting while Allah enjoins for the divorce of women. (Bukhari, Muslim)
4. Mahmud-b-Labeed reported that the Messenger of Allah was informed about a man who gave three divorces at a time to his wife. Then he got up enraged and said: Are you playing with the book of Almighty and Glorious Allah while I am (still) amongst you? So much so that a man got up and said: shall I not kill him. (Nisai)
5. Ayesha reported: I heard the Messenger of Allah say: There is no divorce and no emancipation by force. (Abu Daud, Ibn Majah)
6. Ayesha reported that the Messenger of Allah gave us option and so we chose Allah and His Apostle... (Bukhari, Muslim)
7. Ibn Abbas reported that the wife of Sabet-b-Qais came to the Holy Prophet and said: O Messenger of Allah! As for him I donot blame him about his character and piety but I dislike

(him as much as I dislike) infidelity over Islam. The Apostle of Allah asked: Can you not return his garden? 'Yes', said she. The Prophet said (to Sabet-b-Qais): Accept the garden and give her divorce. (Bukhari)

8. Abu Salma reported that Salman-b-Sakhar made his wife in his sight like the back of his mother till the approach of the month of fasting. When half of fasting month passed away, he had sexual intercourse with her in one night. Then he came to the Prophet and told it to him. Thereupon the messenger of Allah said: Set free a captive. He said: I have got none. He said: Then fast for two months consecutively. He replied; I shall not be able. He said: Feed sixty poor men... (Tirmizi, Abu Daud, Ibn Majah)

9. Ibn Umar reported that the Prophet allowed imprecation between a man and his wife when the man disowned her child. Thus he made separation between them both. He handed over the child to the woman... (Bukhari, Muslim)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

The rights of the woman in respect of divorce and the law governing the procedure of divorce is discussed in the light of the verses of the Qur'an and Ahadith of the Prophet as under:-

1. The divorce is the most hated and unpleasant thing in Islam. According to a well reported Tradition in Abu Daud, the Messenger of Allah said: "The most detestable of lawful things near Allah is divorce." Despite that Islam permits divorce as it becomes inevitable in some extreme situations when it is not possible for the husband and wife to pull on together. It is allowed normally when all the efforts for reconciliation have proved abortive and there are no chances left for them to live together amicably. Even arbiters can be appointed, one from the family of each spouse, to resolve differences between the husband and wife. (Al-Qur'an 4: 35)

2. The method of divorce as propounded by the Qur'an and Sunnah is briefly described in these words: If the husband

intends to divorce his wife, he can do so by making a single pronouncement of divorce within Tuhr during which he has not had sexual intercourse with her, and then leave her to observe *Iddah*. After expiry of *Iddah* (three monthly courses) the divorce would attain finality. The other method is that the husband would pronounce divorce thrice in three successive Tuhrs and in this case, the divorce would become irrevocable after the third pronouncement. In case of one or two divorces, the husband retains the right of Rajuah or reunion within period of *Iddah* by resuming sexual intercourse or by verbal retraction. However, after the expiry of *Iddah*, divorce becomes irrevocable and the husband's right of Rajuah stands forfeited. Now the couple has the right to remarry if they desire to live together. When a husband has repudiated his wife by pronouncing three divorces, he has no right of revocation, neither the couple can remarry. In this situation the parties can remarry only when the woman marries another husband and the latter dies or divorces her after actual consummation of marriage. Tuhr is period of purity between two monthly courses and *Iddah* is the waiting period which a divorcee has to undergo before she can contract a second marriage.

3. The procedure of *Talaq* or divorce enunciated by the Qur'an and Sunnah, as stated above, is spread over a period of almost three months, during which the husband has a right to revoke the divorce. It has been done with a view to check hasty or rash or an arbitrary action on the part of the husband and also to leave the door open for the parties to patch up during the period. During *Iddah* the wife cannot be expelled from the house and she would be entitled to full maintenance and also to good treatment.

4. Those who pronounce three divorces at a single sitting, they have been condemned by the Holy Prophet. According to an authentic Tradition, the Prophet of Islam, when he heard of a man who had given three divorces to his wife at a time, got up enraged and said: "Are you playing with the Book of Almighty and Glorious Allah while I am still amongst you?"

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RIGHTS REGARDING DIVORCE

Hazrat Umar reportedly used to whip such persons who gave three divorces at once. This form of *Talaq* is called *Talaqul Biddat* or irregular divorce and is sinful being against the teachings of the Qur'an and Hadith. However it dissolves the marriage irrevocably and immediately. Shafai and Hanafi Law recognize this form of divorce though they consider it as sinful, but the Shias and Malki do not recognize this mode of *Talaq*.

5. *Iddah* or *Iddat* is the period of waiting during which a divorced woman or a widow is not permitted to remarry. The primary purpose of this waiting period is two-fold; firstly the ascertainment of possible pregnancy and thus of the parentage of the would be baby, secondly the spouses are given an opportunity to resolve their differences and reconcile.

Period of *Iddah* in case of a divorced woman with whom marriage has been consummated and who is still in the age of menstruation is three monthly courses while in case of a divorcee who is past the age of menstruation the period is three months. In the case of a pregnant woman the *Iddah* is up to her delivery. In the case of a widow the waiting period is 4 months and 10 days.

Ameer Ali defines *Iddah* as "an Interval which a woman is bound to observe between the termination, by death or divorce, of one matrimonial alliance and the commencement of another." The divorcee continues to enjoy the same rights in respect of food, clothing and lodging to which she was entitled during the subsistence of marriage, but without of course performing her marital obligations, in the period of *Iddah*. If the husband wants her to suckle their child, he is bound to pay her wages.

6. In case of divorce, the husband is not entitled to take back anything out of that which he has given her, however great it may be (Al-Qur'an 4 : 20) If he has not given her dower already, he is obliged to make the payment of dower, immediately at the time of divorce. For the divorced woman, the husband is required to make some provision as the Qur'an (2 : 241) deems it a duty for the righteous.

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7. Al-Qur'an has given the right of obtaining divorce to a wife if she agrees to pay some ransom or compensation. This is called *Khula*. If the husband and wife are not able to keep the limits of Allah and they agree to dissolve the marriage on the condition that the wife gives some compensation, it would be quite legal (The Qur'an 2 : 229). The jurists are generally of the opinion that such compensation should not exceed the dower given by the husband to the wife. So it is a kind of facility provided to the woman to secure *Talaq* from her husband by returning a part of or full amount of the bridal gift or *Mahr*.

There is a well reported Tradition in Bukhari that the Apostle of Allah permitted the wife of Sabet-b-Qais to get divorce from her husband by surrendering a garden which had been given to her in *Mahr*.

So the Islamic law stipulates that whenever a marriage is dissolved at the instance of the wife and there is no fault of the husband regarding his performance of marital obligations, the wife is the contract breaking party and must, therefore, return the part or full of dower which she has received from the husband.

8. There was an evil custom in the "Days of Ignorance", according to which a man would swear that he would not go to his wife for carnal connection. By this means he would put away his wife for indefinite period. He would keep her in suspense by neither divorcing her nor resuming cohabitation. This practice was resorted to as many times as a husband wished and thus, the life of the wife became miserable. This custom is known as *Ila*. The Qur'an abolished this custom by warning such persons to take decision within four months about their course of action. They should either resume their conjugal relations and take back their wives or decide about divorce (Al-Qur'an 2 : 226). In case the husband does not decide, the woman can take case to a Qazi who would order the husband to reunite with his wife or divorce her.

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9. There was yet another evil practice which was abolished by the Qur'an. The man would say to his wife: "Thou are to me as back of my mother." and thus separate her indefinitely. It was called *Zihar*. It was held to imply a divorce and freed the husband from any responsibility for maintenance of wife and children and other conjugal duties, but the wife was not allowed to leave the husband's home or to contract another marriage. So this custom was not only degrading to a woman but also fatal to the lives of the wife and children. Al-Qur'an abolished this custom by saying: "Such of you as put away your wives (by saying they are as their mothers)—They are not their mothers; none are their mothers except those who gave them birth—they indeed utter an ill word and lie...(58: 2). So such person is ordered to set free a slave or to fast for two consecutive months or to feed sixty needy persons if he is unable to fast. After undergoing this penalty he is entitled to touch his wife. If the husband does not perform this prescribed penance, the wife has a right to apply to court for judicial divorce.

10. If the husband charges his wife of adultery and has got no witnesses, the couple has to undergo what is called *Lian*. The procedure of *Lian* has been prescribed by the Qur'an in the verses from 6 to 9 of chapter 24. The Prophet of Islam used to separate such spouses who had performed *Lian*. It has been held by the jurists that if the charges are false, the wife is entitled to sue for and obtain divorce from a court of law.

11. The Qur'an says: "Thus when they fulfil their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endued with justice, and establish the evidence (as) before Allah..."(65: 2)

From this, some jurists have made the presence of two witnesses compulsory for divorce, while the others consider it optional. Sunni Law makes the presence of two witnesses essential at the time of marriage but not at the time of divorce. On the other hand, the Shiah doctors hold that the presence of

two witnesses is necessary at the time of divorce but not at the time of *Nikah*.

IV - ISLAMIC LAW AND FIQH

Some features of the Islamic Law developed by the jurists on the subject of divorce and woman's right in respect thereof are:

1. *Talaq* means "dismissal" or "rejection". Under Islamic Law it is a release from the marriage tie. It is the dissolution of marriage between the husband and wife immediately or eventually. Any Muslim of sound mind, who is adult, may divorce his wife whenever he desires without assigning any reason.

2. The jurists have classified divorce into three kinds: *Ahsan*, *Hasan* and *Bidd'at*.

Ahsan means 'best'. This form of divorce is also called the most proper or most laudable. Divorce is said to be in this form when a husband repudiates his wife by making one pronouncement of divorce in the period of purity in which he had no sexual intercourse with her, and the woman is left to observe her *Iddah* or waiting period.

Hasan means good. This form of divorce is also called the laudable or proper. Divorce would be in this form if the husband divorces his wife in three pronouncements in three different *Tuhrs*.

Bidd'at: It is an irregular form of divorce where a husband repudiates his wife by three divorces at once.

In the case of *Ahsan* form, the divorce becomes complete and irrevocable after *Iddah*, in *Hasan* form it attains finality after third pronouncement and in *Bidd'at* form it becomes irrevocable immediately.

3. Islam gives the right to woman to demand divorce. A woman can get release from her husband by the following means:

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RIGHTS REGARDING DIVORCE

- (a) *Talaq-i-Tafweez*. If a husband has delegated the power of divorce to his wife, she can exercise the delegated power and can pronounce divorce.
 - (b) *Khula* or Redemption. If she agrees to pay some consideration or compensation to her husband for her release from the marriage tie, the divorce would be known as *Khula*.
 - (c) *Mubarat* or Mutual Release. If the husband and wife by mutual consent agree to dissolve marriage conditionally or unconditionally, the woman would be released.
 - (d) *Lian* or Imprecation. If the husband falsely accuses her of adultery, the wife has right to sue him and obtain divorce.
 - (e) *Ila* or Vow. Where a husband swears that he will not have sexual intercourse with his wife for a period of four months or more or for an unspecified period, and within the period of four months he neither resumes cohabitation nor divorces her, the wife can take the case to the court which would force the husband to resume his relations or divorce her. In case the husband does not agree, the court would order for the dissolution of marriage.
 - (f) *Zihar*: "If the husband (who is sane and adult) compares his wife with his mother or any other female within a prohibited degree, the wife has a right to refuse herself to him until he has performed penance. In default of expiation by penance, the wife has a right to apply for a judicial divorce." (*Mulla*).
 - (g) Judicial divorce: A Muslim woman can also obtain Judicial divorce from her husband under the Dissolution of Muslim Marriages Act, 1939, on the grounds mentioned in that Act.
4. No doubt any adult Muslim of sound mind can divorce his wife whenever he desires without assigning any reasons, however some restrictions have been put on the arbitrary, capricious and rash exercise of this power by the husband. Procedure of divorce, according to the *Ahsan* and *Hasan* form of divorce is spread over a period of three months during

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which the wife would live in her husband's home and would be entitled to maintenance and good treatment. During this period the door for reconciliation and patch up remains open. Besides that, the fixation of a fantastic amount of dower can form a good check on the husband's power of divorce. Moreover the Islamic Law gives the custody of the children to the mother and the father has to provide maintenance for the children. So the husband knows that in case of divorce he would be deprived of his children in addition to providing maintenance for them.

V - LAW IN PAKISTAN

1. The Muslim Family Laws Ordinance, 1961 prescribes the procedure for *Talaq* in its section 7 which reads:
 - (1). Any man who wishes to divorce his wife shall, as soon as may be, after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.
 - (2). Whoever contravenes the provisions of subsection (1) shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.
 - (3). Save as provided in subsection (5), a *talaq* unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under subsection (1) is delivered to the Chairman.
 - (4). Within thirty days of the receipt of notice under subsection (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

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V - LAW IN PAKISTAN

1. The Muslim Family Laws Ordinance, 1961 prescribes the procedure for *Talaq* in its section 7 which reads:
 - (1). Any man who wishes to divorce his wife shall, as soon as may be, after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.
 - (2). Whoever contravenes the provisions of subsection (1) shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.
 - (3). Save as provided in subsection (5), a *talaq* unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under subsection (1) is delivered to the Chairman.
 - (4). Within thirty days of the receipt of notice under subsection (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

RIGHTS REGARDING DIVORCE

(5). If the wife be pregnant at the time *talaq* is pronounced, *talaq* shall not be effective until the period mentioned in subsection (3) or the pregnancy, whichever be later, ends.

(6). Nothing shall debar a wife whose marriage has been terminated by *talaq* effective under this section from re-marrying the same husband without an intervening marriage with a third person, unless such termination is for the third time so effective.

2. For dissolution of marriage otherwise than by *Talaq*, section 8 of the Muslim Family Laws Ordinance, 1961 provides:

Where the right to divorce has been duly delegated in the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by *talaq* the provisions of section 7 shall, *mutatis mutandis* and so far as applicable, apply.

3. The Dissolution of Muslim Marriages Act, 1939 provides the facility of obtaining dissolution of marriage by decree of a court. This is called judicial divorce. Grounds on the basis of which dissolution of marriage can be sought, have been mentioned in Section 2 of this Act. It reads:

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:-

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iia) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

WOMEN'S RIGHTS IN ISLAM

- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) that the husband was impotent at the time of the marriage and continues to be so: Provided that the marriage has not been consummated;
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (vii) that she, having been given in marriage by her father or other guardian before she attained the age of sixteen years repudiated the marriage before attaining the age of eighteen years: Provided that the marriage has not been consummated;
- (viii) that the husband treats her with cruelty, that is to say,
 - (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
 - (b) associates with women of evil repute or leads an infamous life, or
 - (c) attempts to force her to lead an immoral life, or
 - (d) disposes of her property or prevents her exercising her legal rights over it, or
 - (e) obstructs her in the observance of her religious profession or practice, or
 - (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;
- (ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim Law:
Provided that-
 - (a) no decree shall be passed on ground (iii) until the sentence has become final;

- (b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and
- (c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

VI - DIVORCE IN NON-MUSLIM SOCIETIES

Divorce is an abominable and unfortunate practice, but sometimes it becomes necessary and unavoidable. It is the legal dissolution of marriage and is recognised in almost all societies except in Hinduism which considers marriage as a sacrament and makes no provision for its dissolution. Divorce is regarded as a necessary corollary to the law of marriage, but the right of divorce among all the nations of antiquity, with few exceptions, was exclusively reserved for the man. The ancient Jewish Law provided that the man could divorce his wife whenever he so desired. There were hardly any checks over his arbitrary and capricious use of this power. The woman had no right to demand divorce from her husband for any reason however strong it may be.¹

Under Athenian Law, the husband could dismiss his wife for any cause. The wife had no liberty to leave her husband. She could only present her case before the archon on grounds of cruelty or degenerate behaviour.²

1. Syed Amir Ali
2. Encyclopedia Americana

The Romans also gave powers to the men of propertied class to divorce their wives at any time. The method was very simple. The husband simply presented his wife with a letter declaring their mutual freedom.¹ But the wife had no right to sue for a divorce.

The Canon law of the Christian church provided that a separation could be granted by the church upon proof of sufficiently serious grounds like adultery, extreme cruelty, or withdrawal from the church by one of the partners. However, Protestant Reformation led by Martin Luther challenged this situation. Repudiation of the sacramental nature of marriage opened the way for divorce and the legal responsibility of granting divorce was transferred from the church to the state. But the Roman Catholic Church still steadfastly maintains the concept of indissoluble marriage.²

Among the Pre-Islamic Arabs the power of divorce possessed by the husband was unrestricted and unlimited. They knew no rule of humanity in treating their wives.

It is against this background that the law of divorce promulgated by Islam in the early 7th Century conferring substantial rights on the wives appears to be a great blessing and mercy for humanity particularly for the fair sex.

However, in the modern world, almost many nations have liberalized their divorce laws conferring many equitable and humanitarian rights on the women.

1. Encyclopedia Americana
2. Encyclopedia Americana

CHAPTER 8

RIGHTS REGARDING MAINTENANCE

I - INJUNCTIONS OF THE QUR'AN

Injunctions of the Holy Qur'an regarding the rights of woman in respect of maintenance are contained in the following verses:-

1. The mothers shall give suck to their offspring for two whole years, if the father desires, to complete the term. But he shall bear the cost of their food and clothing on equitable terms. (2: 233)
2. There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (a suitable gift) the wealthy according to his means, and the poor according to his means, - a gift of a reasonable amount is due from those who wish to do the right things. (2: 236)
3. For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous. (2: 241)
4. Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. (4: 34)
5. O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: And fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness. Those are limits set by Allah: and any who transgresses the limits of Allah, does verily wrong his (own) soul: Thou knowest not if perchance Allah will bring about thereafter some new situation. (65: 1)

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6. Let the women live (In 'Iddat,') in the same style as ye live, according to your means; annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense; and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf. (65: 6)

7. Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what he has given him. After a difficulty, Allah will soon grant relief. (65: 7)

II - AHADITH OF THE PROPHET

The Traditions of the Holy Prophet about the rights of woman for maintenance are:

1. Jaber-b-Abdullah reported that the Messenger of Allah said: Fear Allah regarding women. Verily you have married them with trust of Allah and made their private parts lawful with the word of Allah.... They have got rights over you in respect of their food and clothing according to means. (Bukhari, Muslim)
2. Jaber-b-Abdullah reported: The Apostle of Allah addressed the people at Arafat during his farewell pilgrimage: Fear Allah about women, because you have taken them with the trust of Allah and made their private parts lawful with the word of Allah. You have got rights over them that they shall not entertain anybody on your bed which you dislike. If they do that, scourge them without being oppressive. And they have got rights over you that you shall clothe them and feed them in a just manner. (Muslim)
3. Hakim-b-Muawiyah from his father reported: I asked: O Messenger of Allah! what right has the wife of one among us got over him? He said: It is that you shall give her food when

you have taken your food, that you shall clothe her when you have clothed yourself.... (Ahmad, Abu Daud, Ibn Majah)

4. Abu Hurairah reported that the Messenger of Allah said: (As for) a dinar you have spent in the way of Allah, and a dinar you have spent in emancipating a slave and a dinar you have given to a poor man in charity, and a dinar you have spent for your family, the greatest of them in reward is that which you have spent for your family. (Muslim)

5. Ayesha reported that Hind, daughter of Utbah, asked: O Messenger of Allah! Abu Sufiyan is a miserly fellow. He does not give what may be sufficient for me and my children, unless I take it from him without his knowledge. He said: Take what suffice you and your children according to means. (Bukhari, Muslim)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

Principles regarding woman's right of maintenance as enunciated by the Qur'an and Sunnah are:

1. According to some well known Traditions reported in authentic books of Hadith, the Prophet (may Allah's peace be upon him) required his followers to accord their wives the best possible treatment. He impressed upon the men the rights of women regarding the food, clothing and lodging. Even in his famous Farewell Address at Arafat, the Apostle of Allah did not forget to exhort the believers to fulfil their obligations regarding the proper maintenance of their women. The Qur'an says: "Lodge them where ye dwell, according to your wealth, and harass them not so as to straiten life for them"- (65 : 6) The Qur'an makes the men Qawwam (care-taker) of women and places the responsibility of earning livelihood of the family primarily on the shoulders of men when it says: "... and because they support them from their means" - (4 : 34)

2. Duty of providing maintenance to the women is so important that the Qur'an makes even the divorced women entitled to it during the period of *Iddah* when the husband

would provide her food, clothing and lodging and cannot expel her from his house (Al-Qur'an 65 : 1 and 65 : 6) If she is expecting, the husband is bound to maintain her till delivery and in case she suckles the child she would be entitled to receive the due payment for this service (Al-Qur'an 65:6). Again the Qur'an says: "The duty of feeding and clothing nursing mothers in seemly manner is upon the father of the child" (Al-Qur'an 2 : 233). In case the father of the child is dead, the obligation of providing maintenance to the nursing mother would be on the heir of the deceased, as the Qur'an says: "And on the (father's) heir is incumbent the like of that (which was incumbent on the father)"- (Al-Qur'an 2 : 233)

3. The Qur'an makes it a duty for the pious and God-fearing persons to make some provision even for those women who have been divorced by them (2 : 241) Muhammad Asad explains this verse (2 : 241) of the Holy Qur'an in these words: "This obviously relates to women who are divorced without any legal fault on their part. The amount of alimony — payable unless and until they remarry — has been left unspecified since it must depend on the husband's financial circumstances and on special conditions of the time."

4. No scale or standard has been fixed for maintenance by the Qur'an or by the Sunnah. However a lot of guidance has been provided to determine it in the given circumstances. The Qur'an says: "No one should be charged beyond one's capacity" (2 : 233). At another place, the Qur'an directs: "Provide for them, the rich according to his means and the straitened according to his means, a fair provision"- (2 : 236). The same principle has been further elaborated when the Qur'an says: "Let the man of means spend according to his means; and the man whose resources are restricted, let him spend according to what Allah has given him"- (65 : 7) These are some of the verses which highlight the guiding principles regarding the determination of the quantum of maintenance. The rich according to his means and the poor according to his means and nobody to be charged beyond his capacity — this is the golden rule.

IV - ISLAMIC LAW AND FIQH

Islamic law and Fiqh regarding maintenance of the women lay down the following principles:-

1. The meaning of "*Nafqah*", which is the Arabic equivalent of "maintenance", is what a person spends on his family. Maintenance includes food, clothing and lodging.
2. The husband is bound to maintain his wife. Her right to receive maintenance is absolute even if she is very rich and owns a lot of property. According to Mulla: "The husband is bound to maintain his wife (unless she is too young for matrimonial intercourse), so long as she is faithful to him and obeys his reasonable orders. But he is not bound to maintain a wife who refuses herself to him or is otherwise disobedient, unless the refusal or disobedience is justified by non — payment of prompt dower or she leaves the husband's house on account of his cruelty." In *Fatawa-i-Kazi Khan*, it is written: "It is incumbent on the man to provide maintenance to his wife, whether she is Muslim or non-Muslim, rich or poor, adult or minor provided intercourse with her is possible." If the husband is poor and the wife supports the family, she is entitled to recover the amount expended by her from the husband when he is in easy circumstances. Dr. Hamidullah writes: The notion of the maintenance goes so far in Islam that, according to the law, a wife is not obliged even to give her breast to her suckling; it is the duty of the father of the child to procure for it a foster mother at his own expense, if the mother does not want to suckle it.
3. If the husband neglects or refuses to maintain his wife without any lawful cause, the wife may sue him for maintenance. The Muslim Family Laws Ordinance, 1961 permits the wife to apply to the chairman who will constitute an Arbitration Council to determine the matter. She can also apply for an order of maintenance under section 488 of Code of Criminal Procedure, 1908.

4. After divorce, the woman is entitled to maintenance from her husband during the period of *Iddah*. However, a widow is not entitled to maintenance during the period of *Iddah*. If the divorcee is pregnant she is entitled to maintenance till delivery and if she suckles the child, her entitlement would be upto the expiry of suckling period. In case the custody of the children is with her, the husband would be bound to provide maintenance for the children.

5. About the scale of maintenance, there has always been difference of opinion among the jurists. Hanafi Law prescribes that the maintenance should be determined with reference to the social position of both the spouses, husband and wife. But the Shafis say that the position of the husband alone should be considered. According to *Hedaya*, when one of them - the husband and the wife - is rich and other poor, a proper mean should be adopted between the two. If both the parties are rich, maintenance should be provided at the high scale, but if both are poor, husband may provide accordingly. Scale of maintenance, according to the Shia Law, should be determined with reference to the requirements of the wife regarding condiments, food, clothing, residence, servants and articles for adornment subject to the custom of her equals among her own people living in the same town.

V - LAW IN PAKISTAN

The Muslim Family Laws Ordinance, 1961 provides law regarding maintenance in its section 9. The relevant section reads:

1. If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may, in addition to seeking any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

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RIGHTS REGARDING MAINTENANCE

2. A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, in the case of West Pakistan, to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer concerned and his decision shall be final and shall not be called in question in any Court.

3. Any amount payable under subsection (1) or (2), if not paid in due time, shall be recoverable as arrears of land revenue.

CHAPTER 9

RIGHTS OF INHERITANCE

I - THE INJUNCTIONS OF THE QUR'AN

Verses of the Holy Book regarding the rights of woman to inherit and succeed are:

1. From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, - a determinate share. (4 : 7)

2. Allah (thus) directs you as regards your children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah and Allah is All-Knowing, All-Wise. (4 : 11)

3. In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child. But if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to anyone). Thus is it ordained by Allah, and Allah is All-Knowing, Most Forbearing. (4 : 12)

4. They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: if (such a deceased was) a woman, who left no child, her brother takes her inheritance: if there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters, (they share), the male having twice the share of the female. Thus doth Allah make clear to you (His law), lest ye err. And Allah hath knowledge of all things. (4: 176)

II - AHADITH OF THE HOLY PROPHET

Ahadith of the Prophet of Islam on the subject of woman's rights to inheritance are as follows:-

1. Jaber reported that the wife of Sa'ad-b-Rabiy came with her two daughters by Sa'ad-b-Rabiy to the Messenger of Allah. She said: O Messenger of Allah! They are the two daughters of Sa'ad. Their father was martyred with you on the day of Uhud, and their uncle has taken their property. He has not left any property for them, and they cannot be married unless they have got some property. He said: Allah will decide about that. Then the verse of inheritance (Al-Qur'an 4:11) was revealed. So the Prophet sent for their uncle and said: Give the two daughters of Sa'ad two-third and give their mother one-eighth, and what remains is for you. (Abu Daud, Ibn Majah, Tirmizi, Ahmad)
2. Sa'ad-b-Abi Waqqas reported: The Holy Prophet came to me while I was ill. He asked: Have you made a will? "Yes", said I. He asked: to what extent? I replied: To the extent of whole of my property in the way of Allah. He asked: What then have you left for your children? (Sa'ad had only two daughters) I replied: They are rich in wealth. He said: Bequeath one-tenth. Then I continued to think it little till he said: Bequeath one-third and one-third is too much - (Tirmizi). In a narration of Bukhari and Muslim, the Prophet said: That you should leave

your heirs free from want is certainly better than that you should leave them poor to beg of men. (Mishkat-ul-Masabih)

3. Waselah-b-Asqa'a reported that the Messenger of Allah said: A woman shall get three inheritances - (from) one whom she emancipated, one whom she picked up and her child about whom she imprecated. (Tirmizi, Abu Daud, Ibn Majah)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

In the light of the Qur'an and Sunnah, the woman's rights of Inheritance are discussed as follows:-

1. No woman had right to inherit in pre-Islamic Arabia and only the male adults who could take up arms in a war had the right to inherit the estate. It comes down to us from the authentic Hadith literature that a Companion of the Prophet (may Allah's peace be upon him) died in the Battle of Uhud leaving behind a widow and two daughters. The family was rich but after the death of the head of the family, his brother took over the estate in accordance with pagan custom and left nothing for the widow and her orphan daughters. So in this pitiable plight, the widow along with her daughters approached the Prophet and apprised him of the situation. It is against this background that the law of inheritance contained in chapter 4 of the Qur'an was revealed which conferred upon the women for the first time in Arabia the rights of inheritance.
2. Prophet Muhammad (may Allah's peace be upon him) was so much conscious of the rights of the heirs regarding inheritance that he advised Hadrat Sa'ad-b-Abi Waqqas who wanted to dispose of the whole of his property (in the way of Allah) not to make will for more than one-third and to leave the remaining two-third for his two daughters and other heirs.
3. Woman is entitled to share inheritance in different capacities like daughter, mother, wife, sister etc. Her share in different positions is discussed briefly as follows. For details please consult books on Islamic Law and Fiqh.

- a) *Share as a daughter:* Where the deceased leaves behind him sons and daughters both, each daughter gets equal to one half of the share of each son. If the deceased leaves only one daughter and no son, the daughter is entitled to half of the inheritance. In case of two or more daughters but no son, the daughters would get two-third of inheritance and share it equally between them. (Al-Qur'an 4: 11)
- b) *Share as a Mother:* If the deceased leaves a child and parents, each of the parents, mother and father, would inherit one sixth share of the heritage. If the deceased leaves no children and no brothers or sisters and his parents are the only heirs, mother would get one third and father the remaining two third of inheritance. In case where the deceased leaves no child but leaves parents and brothers and sisters, the mother would get one sixth share of heritage. (Al-Qur'an 4: 11)
- c) *Share as a wife:* Where the husband dies leaving no child but his wife, the wife would get one-fourth of his estate. If he leaves child or children along with wife, the wife would get one eighth. In case of wives more than one, they would share equally in one-fourth or one-eighth. (Al-Qur'an 4: 12)
- d) *Share as a sister:* If the deceased is not survived by parents and children but leaves behind uterine brother and a sister (brother and sister on mother's side) each would get one-sixth and in case of more such brothers and sisters, they would share in one-third. (Al-Qur'an 4: 12)

Where the deceased leaves no parents and no children but leaves behind full or consanguine sister, she would be entitled to one-half of the estate and in case of two or more such sisters, they would share in two-third of the estate. But if there are brothers and sisters both, the share of each male would be equal to two females.

4. It has been noticed that generally the male takes a share double that of a female in his own category. So an explanation of this inequality is necessary.

Islam has placed the responsibility of earning livelihood for the family on the shoulders of the male members while the females have been exempted from this burden. A woman when she is unmarried lives with her parents and her father is responsible for providing all her expenses and in case of the death of her father, her brothers become responsible for her maintenance and also for meeting her marriage expenses. After marriage she is entitled to maintenance from her husband. In addition to food, clothing and residence, all her expenses are met by her husband. If the husband is poor and she spends out of her personal property for her family, she is entitled to take it back from her husband when the latter is in easy circumstances. Besides maintenance, the woman is also entitled to receive dower from the husband which is the most essential feature of a Muslim marriage. There is no upper limit of dower and she can demand any amount of dower while entering into a marriage contract. Amounts of dower are normally fantastic in Muslim marriages and the contracted dower, how much it may be, has to be paid by the husband and in case of his death, from his estate as a debt. In old age also the entitlement of the woman for maintenance continues and if her husband dies and she is unable to live on her share of the estate of the deceased, she can claim maintenance from her children. Thus it is seen that a woman has practically very few material needs to satisfy on her own account as compared with a man who has been saddled with very heavy economic obligations and liabilities. In this situation there is ample justification for giving a man greater share in inheritance.

IV - HER RIGHTS IN OTHER NATIONS

In the non-Muslim nations and communities of the ancient and medieval ages, the woman enjoyed practically no rights whatsoever of inheritance and succession to property, movable or immovable, of their close ascendants or

- a) *Share as a daughter:* Where the deceased leaves behind him sons and daughters both, each daughter gets equal to one half of the share of each son. If the deceased leaves only one daughter and no son, the daughter is entitled to half of the inheritance. In case of two or more daughters but no son, the daughters would get two-third of inheritance and share it equally between them. (Al-Qur'an 4: 11)
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Where the deceased leaves no parents and no children but leaves behind full or consanguine sister, she would be entitled to one-half of the estate and in case of two or more such sisters, they would share in two-third of the estate. But if there are brothers and sisters both, the share of each male would be equal to two females.

4. It has been noticed that generally the male takes a share double that of a female in his own category. So an explanation of this inequality is necessary.

Islam has placed the responsibility of earning livelihood for the family on the shoulders of the male members while the females have been exempted from this burden. A woman when she is unmarried lives with her parents and her father is responsible for providing all her expenses and in case of the death of her father, her brothers become responsible for her maintenance and also for meeting her marriage expenses. After marriage she is entitled to maintenance from her husband. In addition to food, clothing and residence, all her expenses are met by her husband. If the husband is poor and she spends out of her personal property for her family, she is entitled to take it back from her husband when the latter is in easy circumstances. Besides maintenance, the woman is also entitled to receive dower from the husband which is the most essential feature of a Muslim marriage. There is no upper limit of dower and she can demand any amount of dower while entering into a marriage contract. Amounts of dower are normally fantastic in Muslim marriages and the contracted dower, how much it may be, has to be paid by the husband and in case of his death, from his estate as a debt. In old age also the entitlement of the woman for maintenance continues and if her husband dies and she is unable to live on her share of the estate of the deceased, she can claim maintenance from her children. Thus it is seen that a woman has practically very few material needs to satisfy on her own account as compared with a man who has been saddled with very heavy economic obligations and liabilities. In this situation there is ample justification for giving a man greater share in inheritance.

IV - HER RIGHTS IN OTHER NATIONS

In the non-Muslim nations and communities of the ancient and medieval ages, the woman enjoyed practically no rights whatsoever of inheritance and succession to property, movable or immovable, of their close ascendants or

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descendants. Succession among the pre-Islamic Arabs and in many of the neighbouring societies was confined only to able male relations who were capable to take up arms and defend the motherland against foreign aggression. Wives, mothers, sisters, daughters, minors and incapable and infirm male heirs had no right in the estate of the deceased. In Jewish law, daughters were excluded by the sons and mothers inherited nothing from their children. Daughters had no right even in the property of their mothers. Among the Hindus of India, sons exclude the daughters from inheritance. The widows and other females have no absolute rights in the estate. In the law of inheritance, distinction is also made between self-acquired and ancestral properties. In England and Europe, the laws of primogeniture were mostly in vogue. According to these laws, male line was preferred over the female and the eldest over the youngest. In the inheritance laws a distinction was also made between real and personal properties.

It is with the rise of the modern civilization in the 19th and 20th century that these disparities and inequalities have been removed and the laws of inheritance have been made more human and realistic. On the other hand, Islam introduced its laws of inheritance some fourteen hundred years ago which contains no such inequalities and irregularities and confers the most fair and equitable rights on the females and other weaker sections of society.

CHAPTER 10

WOMAN'S EVIDENCE

I - INJUNCTIONS OF THE QUR'AN

Verses of the Holy Qur'an regarding the evidence of woman are quoted below:

1. O ye who believe! when ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: as Allah has taught him, so let him write. Let him who incurs the liability dictate, but let him fear his Lord Allah, and not diminish aught of what he owes. If the party liable is mentally deficient, or weak, or unable himself to dictate, let his guardian dictate faithfully. And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. (2 : 282)
2. And for those who launch a charge against their spouses, and have (in support) no evidence but their own,—their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth.

And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie.

But it would avert the punishment from the wife, if she bears witness, four times (with an oath) by Allah, that (her husband) is telling a lie;

And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth. (24 : 6-9)

3. When the female (infant), buried alive, is questioned—
For what crime she was killed; (81 : 8-9)

II - AHADITH OF THE HOLY PROPHET

Traditions of Prophet Muhammad (may peace be upon him) on the evidence of woman are as follows:-

1. Anas reported that a Jew grinded the head of a girl between two stones. It was questioned to her: who has done this to you? So and so, so and so—till he named the Jew. She then nodded her head. The Jew was brought and he confessed. Then the Messenger of Allah passed order about him and his head was grinded with stones. (Bukhari and Muslim)
2. Wael-b-Hujr reported that a woman came out at the time of the Messenger of Allah intending to say prayer. A man forced her and dragged her and satisfied his lust with her. She raised alarm but he went away. She passed by a host of the refugees and said: That man did with me such and such thing. They overtook him and came with him to the Messenger of Allah. He said to her: Go back because Allah has forgiven you and he said about the man: Stone him to death... (Tirmizi, Abu Daud)
3. Oqbah-b-Haris reported that he married the daughter of Abu Ehab-b-Abdul Aziz. A woman came and said: I have indeed suckled Oqbah and the girl that is married to him. Oqbah said to her: I don't know that you have suckled me, nor you have informed me. He then sent for Abu Ehab and asked his family. They said: we did not know that she suckled our daughter. He then rode to the Messenger of Allah at Madinah and asked him. The Holy Prophet exclaimed: How? It is said: Oqbah divorced her and she married another husband. (Bukhari)
4. Ayesha reported that the Messenger of Allah said: The deposition of a treacherous man and treacherous woman is not admissible... (Tirmizi)

5. The Prophet is reported to have said: The evidence of a woman is admissible in matters in which it is not possible for men to see or observe. (Hedaya)

III - HER EVIDENCE IN THE LIGHT OF QUR'AN AND HADITH

Law of evidence and the position of woman as witness is briefly discussed in the light of the Holy Qur'an and Sunnah as under:-

1. The Qur'an says about evidence "And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose for witnesses, so that if one of them errs (through forgetfulness) the other can remind her..." (2 : 282)

From this verse, it is generally contended by the critics of Islam that Islam renders two women equal to one man in the matters of evidence. However, this criticism is totally baseless and unfounded if judged by an unbiased mind. Firstly, this injunction of the Qur'an pertains to the business and commercial transactions only which are so often very complicated and ambiguous to understand even by an expert businessman. A woman being generally not involved in such difficult transactions has no knowledge or understanding of them and, therefore, she is likely to get confused. Secondly, from the words of the Qur'an it is clear that actually evidence would be given by one woman and the other would be present merely to remind her if she forgets. Thirdly, the presence of two women is for the purpose of moral support and boosting the confidence of the woman witness as the company of the other woman would raise the morale of the female witness. The atmosphere of courts being dominated by men—the judges, the lawyers, the litigants and the witnesses being generally men—a woman is likely to get confused and forget in such an awe-inspiring atmosphere.

2. In no other matters, except the commercial transactions of complicated nature referred to in verse No. 282 of chapter

2, does the Qur'an command its believers to equate the evidence of two women with one man. In the matter of Lian or imprecation where the husband charges his wife of adultery, the testimony of the woman would be equal to her husband (Al-Qur'an 24 : 6-9) On the Day of judgement, God will ask the infant female child who was buried alive and only on her evidence, He would punish the person guilty of this heinous crime even without listening to or looking at the offender. (Al-Qur'an 81 : 8-9)

3. Traditions of the Prophet Muhammad (peace be upon him) reproduced above establish beyond any doubt that the Prophet of Islam punished the Jew guilty of grinding the head of a girl between two stones on the evidence of the girl alone, and on the evidence of a woman alone who had been raped, the Prophet (peace be upon him) punished the man who was guilty. So much so that the evidence of a woman who had fostered the man and the woman of very respectable families in their infancy, caused the breach of their marriage, since foster brother and sister cannot be united in marriage according to Islamic Law.

4. In the matters which pertain to women specially—and mind it! these are not few matters since the women constitute half of human beings—the evidence of a woman would carry rather more weight than the evidence of man. Encyclopaedia of Seerah says:

However, in some other fields, a woman witness may not only suffice but may also over-ride the evidence of many men and women, especially in fields where expert and sound knowledge is needed in which women may be more proficient than a men.

5. In case of agreements and contracts where written deeds are to be executed, it is possible to have witnesses of one's own choice. But in criminal cases like theft, adultery, etc., it is not possible to have witnesses of one's choice as we have to depend on the evidence of those persons who were eye-witnesses to such incidents, they may be males or females. So

in such situations, the evidence of a woman would not only be admissible but also would be equally reliable as that of a man.

IV - VIEWS OF THE SCHOLARS

Views of some of the eminent modern scholars of Islam regarding the injunction of Qur'an pertaining to the evidence of a woman are furnished as under for clearer comprehension and understanding:

1. Allama Muhammad Asad in his book "The Message of the Qur'an" writes as under:

"The stipulation that two women may be substituted for one male witness does not imply any reflection on woman's moral or intellectual capabilities: it is obviously due to the fact that, as a rule, women are less familiar with business procedures than men and, therefore, more liable to commit mistakes in this respect."

2. Encyclopaedia of Seerah explains it in these words:-

"As women are generally not involved in business matters, especially when contracts of credit with complex terms and conditions are drawn up, they would not normally be interested in such contracts. For this reason, there is every likelihood that they may not remember accurately the terms of such business dealings and, therefore, the evidence of one woman may not suffice for the purposes of right judgement. Besides, the atmosphere of the law courts is so awe-inspiring that even men of sound judgement are sometimes confused and puzzled regarding legal matters and their implications in law suits. What would be the position of an ordinary woman who is dragged into business matters in which she is neither interested nor has any knowledge of in general? In view of this delicate situation of the woman witness in such cases, the Qur'an suggests that a woman supporter should accompany the woman witness in order to provide her with company and to encourage her, so that she may

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not get confused in the awe-provoking atmosphere of the court and be able to give true testimony. This support of a woman companion is therefore proposed to help a woman witness to keep calm and enable her to give sound evidence. The words of the *Qur'an* are very meaningful in this respect, "So that if one of them errs, the other can remind her." (2 : 282). This is a clear indication that the requirement of a second woman is meant to be more of a support and encouragement for the woman witness, so that she can give the right evidence rather than to act as a second witness. Her presence is required to keep the main woman witness in her right and sound mind so that she may not err but give the right evidence."

3. Ahmad Ali, in his translation of the Holy *Qur'an* explains the evidence of a woman in these words: "The presence of two women does not mean that both are witnesses, or that the evidence of one woman is half of that of a man. In no other place in the *Qur'an* two women have been suggested as witnesses except here, because this is a case of a special transaction and women, not being adepts at business, were more likely to get confused than men."

CHAPTER 11

WOMAN AND POLYGAMY

I - INJUNCTIONS OF THE QUR'AN

The Holy *Qur'an* has restricted man's right of contracting plural marriages to a maximum of four at a time, while the rights of wives in case of multiple marriages of the husband have been protected. The relevant injunctions of the *Qur'an* are:

1. If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess. That will be more suitable, to prevent you from doing injustice. (4 : 3)
2. Ye are never able to be fair and just as between women, even if it is your ardent desire: but turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding and practise self-restraint, Allah is Oft-Forgiving, Most Merciful. But if they disagree (and must part), Allah will provide abundance for all from His All-reaching bounty: for Allah is He that careth for all and is Wise. (4 : 129-130)

II - AHADITH OF THE PROPHET

Traditions of the Prophet of Islam on polygamy and the rights of the wives are:

1. Ibn Umar reported that Gailan-b-Salamah al-Saqafi accepted Islam while he had ten wives of the Days of Ignorance. They also embraced Islam with him. The Holy Prophet said: Keep four and be separate from the rest. (Ahmad, Tirmizi and Ibn Majah)

2. Naufal-b-Mu'wayiah reported: I accepted Islam while there were five wives with me. I asked the Prophet who said: Separate one and keep four... (Sharhi Sunnat)
3. Ayesha reported that the Messenger of Allah used to have turns among his wives and do justice. He used to say: O Allah! this is my division in what I can control. So don't blame me in what Thou dost control and I cannot control. (Tirmizi, Abu Daud, Ibn Majah)
4. Abu Hurairah reported from the Holy Prophet who said: when a man has two wives and he does not deal equitably between them, he will come on the Resurrection Day with a side hanging down. (Tirmizi, Abu Daud, Nisai)

III - POLYGAMY IN THE LIGHT OF QUR'AN AND HADITH

Rights conferred on woman in case of polygamy of the man are discussed below in the light of Qur'an and Hadith:

1. The Qur'an, in its verse 3 of chapter 4 permits polygamy and the following hard and fast rules have been laid down about it:
 - a). If you fear that you would not be able to deal fairly and equitably with the orphans, you should marry the women who (have these orphans with them and) seem good to you.
 - b). You are permitted to marry even two, three or four women but not more at a time provided you can treat them justly and equitably.
 - c). If you have reason to fear that you cannot do justice with all of them, you should marry only one.

'Adl' or justice has not been defined in this verse. However all the commentators of the Qur'an unanimously hold that justice in this verse means equality of treatment in food, clothing and lodgement. Mu'tazilite doctors hold that in addition to food,

clothing and lodging there must be equal treatment also in love and affection.

2. The Qur'an in its verse 129 of chapter 4 holds that you cannot deal equally with all of your wives however much you wish. Therefore, you are directed not to incline towards one so much that you leave the other in suspense. There may be so many factors on account of which it would be difficult for the husband to deal equally between them. For example, difference in temperament, appearance, education, family background, age, ability to look after the household affairs, etc., may cause the husband to prefer one above the other. However, the husband must try his best to keep balance and accord them equal treatment in the things on which he has control like food, clothing and lodging. On the things on which he has no control like love and affection, even there he should not display by his outward behaviour that he loves one wife and hates the other one. The husband should not incline towards his favourite one altogether and neglect the other one completely. On the basis of this verse (4 : 129) some people try to establish that monogamy is the only form of marriage which is lawful since polygamy is permitted with the condition of justice and in this verse, Allah has Himself pointed out that maintaining justice between wives is impossible. However this assumption is not correct when we look at the second sentence of this verse which reads: "But turn not altogether away (from one), leaving her as in suspense."
3. There is almost consensus of opinion among all the scholars of the Qur'an and doctors of Islamic Law that verse 3 of chapter 4 of the Qur'an permits polygamy. However the injunction is in the nature of permission and not in the nature of order or command. The Qur'an simply permits its followers to contract plural marriages and does not command them to do so. It also restricts the maximum number of wives at four and the permission is also subject to the proviso that the husband must do justice with all the wives and deal with them equally. I think there is another condition or proviso also that the choice of wives for plural marriages must be from among the

widows or orphan girls. It is only in this sense that the relevance of the opening sentence of this verse (4 : 3) is justified which reads thus: "And if ye fear that ye will not deal fairly by the Orphans, marry of the women..." If this sentence of the verse under discussion is read and considered with the preceding verse (4 : 2), the meanings become more clear. "Give unto orphans their wealth. Exchange not the good for the bad (in your management thereof), nor absorb their wealth into your wealth. Lo! that would be a great sin. And if ye fear that ye will not deal fairly by the orphans, marry of the women, who seem good to you, two or three or four..." (4 : 2 and 4 : 3). It is apparent from this that the Qur'an is exhorting its followers to do justice with the orphans who are under their care. It is against this background that polygamy has been permitted so that they may be able to do justice with them and treat them fairly by marrying the mothers or the sisters of the orphans and thus becoming their close relations. In that way they would feel and develop love, affection and tenderness towards the orphans and would treat them kindly as if the orphans were their own children.

4. The Qur'an did not, in fact, introduce polygamy. That existed in pre Islamic Arabia and also in the neighbouring communities. Al-Qur'an actually limited the number of wives, which could be any among the pagans, to four and also subjected polygamy to a very strict condition of doing justice between the wives. Traditions of the Prophet of Islam also support this interpretation. It is reported that Gailan, the Chief of Ta'if had ten wives when he accepted Islam. The Prophet (peace be upon him) allowed him to keep four and separate the others. Similarly he allowed Naufal to keep four wives and divorce the fifth. The Prophet (peace be upon him) also declared: when a man has two wives and he does not deal equitably between them, he will come on the Day of Judgement with a side hanging down." Thus he enjoined upon his companions and followers who indulge in polygamy to deal equitably with their wives.

5. The Commentators and the scholars of the Qur'an through centuries have laboured hard and collected a valuable treasure of learning about the permission given by Islam regarding polygamy. They have also discussed the exceptional and extra-ordinary circumstances which not only justify but also make it essential that one must resort to plural marriages. Some of these exceptional situations which justify polygamy are discussed as under:-

- a) First such exception is war. In case of war men are generally killed in large numbers. Thus the number of men is decreased while the number of females increases specially of helpless widows and orphans. If polygamy is not permitted to support the widows and the orphans and also to bring the unmarried women into marriage bond, it would lead not only to economic misery of many families but also to immoral practices like prostitution, adultery, sexual anarchy etc. Such a social disintegration can be averted only if a man is permitted by law to have more than one wife.
- b) The wife may be sterile and the natural desire for progeny may lead the husband to contract another marriage, who does not want to divorce the first wife but at the same time wants to have children.
- c) Some men may, by nature, be sexually very strong. So they cannot remain content with one wife. A woman is disabled on account of menses for almost a week in every month and besides that, pregnancy, delivery and weaning of the child is spread over almost a period of more than two years. During these periods, she is unable to meet the husband's biological needs. Hence the need of the husband for the second wife.
- d) The wife may be chronically diseased and unable to satisfy the sexual urge of her husband. In certain cases she may be able to perform marital obligations but her fragile health may not withstand pregnancies and child births.

Hence a second marriage in such a situation may become a necessity.

e) Dr. Hamidullah offers yet another interesting situation which justifies Islam's permission of polygamy. He says: "Supposing there is a case, in which a woman has young children, and falls chronically ill, becoming incapable of doing the household work. The husband has no means of employing a maid-servant for the purpose, not to speak of the natural requirements of the conjugal life. Supposing also that the sick woman gives her consent to her husband to take a second wife, and that a woman is found who agrees to marry the individual in question. Western law would rather permit immorality than a legal marriage to bring happiness to this afflicted home."

f) It is also said that prostitution can be controlled by the introduction of polygamy.

IV - LAW IN PAKISTAN

Law of polygamy in Pakistan is governed by The Muslim Family Laws Ordinance, 1961. Section 6 of this Ordinance provides:

- (1) No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.
- (2) An application for permission under subsection (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state the reasons for proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.
- (3) On receipt of the application under subsection (2) the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed

marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.

(4) In deciding the application the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, in the case of West Pakistan, to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer concerned and this decision shall be final and shall not be called in question in any Court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall-

- (a) pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and
- (b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

V - VIEWS OF THE SCHOLARS

Views of some eminent Scholars on the subject are cited below:

1. Abdullah Yusuf Ali writes: "The unrestricted number of wives of the 'Times of Ignorance' was now strictly limited to a maximum of four, provided you could treat them with perfect equality, in material things as well as in affection and immaterial things. As this condition is most difficult to fulfil, I understand the recommendation to be towards monogamy."
2. According to Maulana Fazl-ul-Karim, monogamy is the rule in Islam, while polygamy is an exception. He writes: The Qur'an clears up this idea by saying: Marry such women as seem good to you, two, three or four; but if you fear that you

cannot do equal justice to them all, you should marry only one — 4 : 3 Q. Thus it is seen that the condition of equal treatment among several wives has been laid in order to the desirability of a monogamous life. It has again been emphasised by the Qur'an saying: And you have not in your power to do justice among the wives though you may covet it, but be not disinclined from one with total disinclination, so that you leave her as if hanging in the air (4:129Q). From these two verses, it is clear that Islam enjoins taking only one wife but it keeps reservation and safe-guard to meet the cases of emergency. As Islam gives us a perfect code of marriage without any necessity of future legislation, it kept its laws elastic in order that they may be adaptable in every circumstance and in every condition of society.

3. Dr. Hamidullah, in his famous work 'Introduction to Islam', writes: "In fact, Muslim law is nearer to reason. For, it admits polygamy when a woman herself consents to such a kind of life. *The law does not impose polygamy, but only permits it in certain cases.* We have just remarked that it depends solely on the agreement of the woman. This is true of the first wife as well as with the second one in prospect. It goes without saying that the second woman may refuse to marry a man who has already one wife; we have seen that no one can force a woman to enter into a marriage tie without her own consent. If the woman agrees to be a "co-wife" it is not the law which should be considered as cruel and unjust with regard to women and as favouring only men. As to the first wife, the act of polygamy depends on her. For, at the time of her marriage, she may demand the acceptance and insertion, in the document of the nuptial contract, of the clause that her husband would practise monogamy."

4. Syed Ameer Ali, in his renowned book 'The Spirit of Islam', writes: "It is worthy of note that the clause in the Koran which contains the permission to contract four contemporaneous marriages, is immediately followed by a sentence which cuts down the significance of the preceding passage to its normal and legitimate dimensions. The passage

runs thus, "You may marry two, three, or four wives, but not more." The subsequent lines declare, "but if you cannot deal equitably and justly with all, you *shall* marry only one". The extreme importance of this proviso, bearing especially in mind the meaning which is attached to the word "equity" ('*adl*') in the Koranic teachings, has not been lost sight of by the great thinkers of the Moslem world. '*Adl*' signifies not merely equality of treatment in the matter of lodgment, clothing and other domestic requisites, but also complete equity in love, affection and esteem. As absolute justice in matters of feeling is impossible, the Koranic prescription amounted in reality to a prohibition. This view was propounded as early as the third century of the Hegira. In the reign of al-Mamun, the first Mu'tazilite doctors taught that the developed Koranic laws inculcated monogamy."

5. Maulana Omar Ahmad Osmani holds that the general rule is monogamy while polygyny is an exception limited to the above-mentioned circumstances. In order to prove the general rule he refers to the meaning of *zauj* (زَوْج) which means a pair or couple, husband or wife, an individual when consorting with another. The word *zauj* is used in Arabic for the husband as well as the wife but the idea is of a pair or couple (one man and one wife) and not of one man and several wives. According to the Qur'an mankind was "created from a single soul and from it (was) created its mate and from them twain hath spread abroad a multitude of men and women". Only one mate was thus created for Adam and both of them were made to dwell in the Garden (جنة *Jannah*). Thus Adam is proved to have only one wife. While dealing with the stage through which the sperm has to pass before the human being is born it is said: "And made of him a pair, the male and female." The rule of *zauj* (زَوْج) is thus one man and his one mate. (Quoted by Aftab Hussain J. in Status of Woman in Islam.)

6. Maulana Maududi writes about the permission of polygamy by the Qur'an: "It should also be noted that this verse restricts polygamy with the provision of justice to all the

wives; therefore whoso abuses this permission without fulfilling the condition of justice and marries more wives than one tries to deceive Allah. The courts of an Islamic State are, therefore, empowered to enforce justice in order to rectify the wrong done to a wife or wives. At the same time it is absolutely wrong to conclude from the proviso of justice, attached to this Commandment, that this verse was really meant to abolish polygamy. This is not the view of the Qur'an, but of those Muslims who have been overawed by the Christians of the West. They say that the Qur'an is also against polygamy but it did not abolish it directly because it did not consider it expedient at the time for the custom had become very common. Instead of this, it allows polygamy provided that justice is done to all the wives. As this condition is most difficult to fulfil, the recommendation is towards monogamy. Obviously, this way of thinking is the result of mental slavery, because polygamy in itself is not an evil for in some cases it becomes a real cultural and moral necessity. There are some people, who, even if they wished, cannot remain content with one wife. Polygamy comes to their rescue and saves them and the society in general from the harms of unlicensed sexual indulgences. That is why the Qur'an allows polygamy to such people with the explicit condition of doing justice to all the wives.

As regards those who consider polygamy to be an evil, they are free to oppose the Qur'an and condemn polygamy, but they have no right to ascribe their own perverted views to the Qur'an, for it makes this lawful in very clear language without employing any words that might be stretched in any way to imply that the Qur'an means to abolish it."

7. According to Maulana Omar Ahmad Osmani, verse three of the fourth chapter applies only to orphan girls and widows and does not allow plurality of wives from amongst other women. The relevant words of the translation of the verse are: 'And if ye fear that ye will not deal fairly by the orphans, marry of the women who seem good to you, two or three or four...' 'The women' is the translation of *an nisaa* (النساء) while

'orphans' is the translation of the word *al yatama* (اليتيم). The argument is that the definite article *al* (ال) in *alnisaa* (النساء) must refer to *yatama* i.e. orphans otherwise the word (نساء) would have been sufficient to convey the sense of generality of women.

He further says, and quotes Jassas in support of it, that the word *yatama* (يتيم) does not mean orphans only but also includes widows and divorcees. Women covered by either category abounded in the then Muslim Society. The meaning of the verse is that men can marry upto four wives from among these helpless orphans and widows provided they are capable of maintaining justice and equality between them. The permission to marry more than one wife is limited to the emergency referred to above and is in no way general in nature. (Quoted by Aftab Hussain J. in "Status of the women in Islam".)

8. On the question why Islam permits polygamy (man having more than one wife) and why not polyandry (woman having more than one husband), Muhammad Asad says: "As regards the permission to marry more than one wife (up to the maximum of four), it is so restricted by the condition, "if you have reason to fear that you might not be able to treat them with equal fairness, then [marry only] one", as to make such plural marriages possible only in quite exceptional cases and under exceptional circumstances. Still, one might ask why the same latitude has not been given to women as well; but the answer is simple. Notwithstanding the spiritual factor of *love* which influences the relations between man and woman, the determinant *biological* reason for the sexual urge is, in both sexes, procreation: and whereas a woman can, at one time, conceive a child from one man only and has to carry it for nine months before she can conceive another, a man can beget a child every time he cohabits with a woman. Thus, while nature would have been merely wasteful if it had produced a polygamous instinct in woman, man's polygamous inclination is biologically justified. It is, of course, obvious that the biological factor is only one - and by no means always the

most important - of the aspects of marital love; none the less, it is a basic factor and, therefore, decisive in the institution of marriage as such. With the wisdom that always takes human nature fully into account, Islamic Law undertakes no more than the safeguarding of the socio-biological function of marriage (which includes also care of the progeny), allowing a man to have more than one wife and not allowing a woman to have more than one husband at one time; while the spiritual problem of marriage, being imponderable and therefore outside the scope of law, is left to the discretion of the partners. In any event—since marriage in Islam is a purely civil contract - recourse to divorce is always open to either of the two partners.

9. In the words of *Dr. Annie Besant*, "There is pretended monogamy in the West but there is really a polygamy without responsibility; the mistress is cast off when the man is weary of her, and sinks gradually to be a woman of the street, for the first lover has no responsibility for her future and she is a hundred times worse off than the sheltered wife and mother in a polygamous home. When we see the thousands of miserable women who crowd the streets of Western towns during the night, we must surely feel that it does not lie within the Western mouth to reproach Islam for polygamy. It is better for woman, happier for woman, more respectable for woman, to live in polygamy, united to one man only, with the legitimate child in her arms, and surrounded with respect, than to be reduced, cast out in the streets - perhaps with an illegitimate child.

10. French scholar, *Dr. Le Bon* says, "A return to polygamy, the natural relationship between the sexes, would remedy many evils: prostitution, venereal diseases, abortion, the misery of illegitimate children, the misfortune of millions of unmarried women resulting from the disproportion between the sexes, adultery and even jealousy, since the disregarded wife would find consolation in her cognizance of not being secretly deceived by her husband."

11. *Dr. Westermarck* gives another reason in support of polygamy. He mentions sexual abstinence during pregnancy. There are many women who feel less or no desire for sexual relationships during periods of pregnancy and give preference to total abstinence. Some experts even regard sexual intercourse during periods of pregnancy as very injurious to the health of the woman as well as of her unborn baby. According to him, "Another ground for polygamy is the strong and innate polygamous instinct of men as compared to women, who are generally monogamous by nature. The man's taste for variety in sex experience is more intense than the woman's and this has led to the often repeated statement that he is instinctively polygamous."

12. *Encyclopedia Americana* writes: "Although monogamy is the most prevalent form of marriage, studies have shown that it is not considered the ideal or preferred type. In a sample of 565 of the world's societies, 75% favoured polygyny, slightly less than 25% favoured monogamy, and less than 1% preferred polyandry. Nevertheless, most of the marriages in these societies are monogamous."

VI - POLYGAMY IN OTHER SOCIETIES

Since times immemorial, polygamy has been a recognised and established institution in almost all human societies. It has remained a part and parcel of all known civilisations in history. Its practice was common among the royalty but sometimes it was also practised by the common people.

Among the Hindus in India, polygamy prevailed from the earliest times. There was apparently no restriction as to the number of wives a man might have. There are many instances in the *Rig Veda* and other Hindu Scriptures mentioning the multiple wives of Hindu kings and heroes. A high caste Brahmin, even in modern times, is privileged to marry as many wives as he chooses¹ Medes, Assyrians, Babylonians,

1. Ameer Ali.

Persians, Athenians, Phoenicians, Thracians, Lydians and the Pelasgians all practised polygamy.

Polygamy was common in Biblical and Talmudic times and most of the famous Prophets took several wives. Hadrat Ibrahim (Abraham) had two wives, Hadrat Yaqub (Jacob) and Hadrat Musa (Moses) had four each, Hadrat Dawud (David) had nine wives and Hadrat Sulaiman (Solomon) had one thousand and seven hundred wives and three hundred slave girls (*Encyclopaedia of Seerah*).

Mosaic Law did not impose any restriction on the number of wives a Hebrew husband could have. In later times, the Talmud of Jerusalem restricted the number to the ability of the husband to maintain the wives properly.¹

Even in Christianity which has become synonymous with monogamy, Jesus Christ himself never uttered a word against polygamy. Rather some famous Christian theologians like Luther, Bucer, etc, do not hesitate to deduce the legality of polygamy from the parable of the ten virgins, spoken of in the Gospel of Matthew (25 : 1-12); for Christ envisages there the possibility of the marriage of one man with as many as ten girls simultaneously. If the Christians do not want to profit by the permission (which the founder of their religion seems to have given them) the law is not changed for all that.²

Though Islamic Law permits polygamy yet the reforms introduced by Islam in this institution are praise-worthy. It restricted the number of wives to four and tied it up with the condition of justice and equal treatment with all wives. Since it is not humanly possible to fulfil this condition, many Muslim scholars like Abdullah Yusuf Ali take it as a recommendation towards monogamy.

Encyclopaedia Britannica writes: "Monogamy as the unique and exclusive form of marriage, in the sense that bigamy is regarded as a grave criminal offence and a sin as

1. Ameer Ali.

2. Dr. Hamidullah.

well as a sacrilege, is very rare indeed. Such an exclusive ideal and such a rigid view of marriage is perhaps not to be found outside the modern, relatively recent development of Western culture. It is not implied in Christian doctrine even."

CHAPTER 12

WOMAN AND PURDAH

I - INJUNCTIONS OF THE QUR'AN

The Qur'an commands the believers, both men as well as women, to lower their gaze and keep modest. However, the women have been obliged to fulfil certain additional responsibilities in the matter of dress, adornment, etc. The relevant verses are:

1. Say to the believing men that they should lower their gaze and guard their modesty: that will make for greater purity for them: and Allah is well acquainted with all that they do. (24 : 30)
2. And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof: that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers or their brothers' sons, or their sisters' sons, or their women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! turn ye all together towards Allah, that ye may attain Bliss. (24 : 31)
3. O ye who believe Let those whom your right hands possess, and the (children) among you who have not come of age ask your permission (before they come to your presence), on three occasions, before morning prayer: the while ye doff your clothes for the noonday heat; and after the late-night prayer: These are your three times of undress: outside those times it is not wrong for you or for them to move about

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attending to each other: thus does Allah make clear the Signs to you: for Allah is full of knowledge and wisdom. (24 : 58)

4. Such elderly women as are past the prospect of marriage,- there is no blame on them if they lay aside their (outer) garments, provided they make not a wanton display of their beauty: but it is best for them to be modest: and Allah is One Who sees and knows all things. (24 : 60)

5. O Consorts of the Prophet! Ye are not like any of the (other) women: if ye do fear (Allah), be not too complaisant of speech, lest one in whose heart is a disease should be moved with desire: but speak ye a speech (that is) just. (33 : 32)

6. There is no blame (on these ladies if they appear) before their fathers, or their sons, their brothers, or their brothers' sons, or their sisters' sons, or their women, or the (slaves) whom their right hands possess. And (ladies), fear Allah: For Allah is witness to all things. (33 : 55)

7. O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested: and Allah is Oft-Forgiving, Most Merciful. (33 : 59)

II - AHADITH OF THE PROPHET

Ahadith of the Prophet regarding *purdah* are:

1. Ayesha reported that Asma'a daughter of Abu-Bakr came to the Messenger of Allah while there were thin clothes on her. He approached her and said: O Asma'a! when a girl reaches the menstrual time, it is not proper that anything on her should remain exposed except this and this. He hinted on her face and palms. (Abu Daud)
2. Jaber reported: My maternal aunt was divorced thrice. She then intended to get fruits of her palm trees. A man threatened her for her coming out. She came to the Prophet who said: Yes, take fruits of your palm trees. It is perhaps you will make gift or do some good act. (Muslim)

3. Jaber reported that the Messenger of Allah said: Behold! a man must not pass a night near a married woman who had consummation, except his being her husband or one within the prohibited degrees. (Muslim)
4. Jabir-b-Abdullah reported: I asked the Prophet about glance at a strange woman. He ordered me to turn away my glance. (Muslim)
5. Umme Atiyya reported: The Messenger of Allah commanded us to bring out on *Id-ul-Fitr* and *Id-ul-Adha* young women, menstruating women and *purdah*-observing ladies, menstruating women kept back from prayer, but participated in goodness and supplication of the Muslims. I said: Messenger of Allah, one of us does not have an outer garment. He said: Let her sister cover her with her outer garment. (Muslim)
6. Bahaz-b-Hakim reported that the Messenger of Allah said: Protect your private parts except from your wife or what your right hand possesses. I asked: O Messenger of Allah! inform me in case a man is alone. He said: Allah is then more to be ashamed of. (Tirmizi, Abu Daud, Ibn Majah)
7. Omar reported from the Prophet who said: A man shall never keep alone with a woman except that the third between them is the devil. (Tirmizi)
8. Abu Saeed reported that the Messenger of Allah said: No man shall look to the private parts of a man and no woman to the private parts of a woman, nor a man shall be with another man underneath the same cloth, nor a woman with a woman underneath the same cloth. (Muslim)
9. Oqbah-b-A'mer reported that the Messenger of Allah said: Be careful of coming to a woman. A man asked: O Messenger of Allah, inform me about husband's relations. He said: Husband's relations are (as it were) death. (Bukhari, Muslim)

10. Ibn Mas'ud reported from the Prophet who said: A woman is (like) a private part. When she goes out (not properly dressed), the devil casts glance at her. (Tirmizi)
11. Ali reported that the Prophet said to him: O Ali, don't keep your thigh exposed and don't look at the thigh of any living man, or of a dead man. (Abu Daud, Ibn Majah)
12. Omme Salamah reported that she and Maimunah were near the Prophet when the son of Omme Maktum came to him. The Prophet said: Screen from him. I asked: O Messenger of Allah, is he not a blind man who does not see us? The Holy Prophet said: Are you blind and do you not see him? (Ahmad, Tirmizi, Abu Daud)
13. Anas reported that the Prophet came to Fatimah with a slave whom he gifted her. There was a piece of cloth over Fatimah. When her head was covered with it, it did not reach her legs; and when her legs were covered with it, it did not reach her head. When the Messenger of Allah saw what she was covering with, he said: There is no sin for you therefor. He is your father and he is your slave. (Abu Daud)
14. Ayesha reported: Never have I looked to or seen the private parts of the Messenger of Allah. (Ibn Majah)
15. Hasan reported a defective tradition. It reached me that the Messenger of Allah said: Allah curses one who looks with lust and who is looked upon. (Baihaqi)
16. Omme Salamah reported that the Messenger of Allah was near her when within the house there was an eunuch (working as servant in house). The eunuch said to Abdullah-b-Omayyah, brother of Omme Salamah: O Abdullah, if tomorrow Allah gives you victory over Tayef, I shall point out to you the daughter of Ghilan with four folds of fat with front and in eight behind. The Messenger of Allah said: They (servants like that eunuch) should never come to you. (Bukhari, Muslim)
17. Abu Hurairah reported that the Apostle of Allah said: No woman shall make a journey to the distance of one day and

one night except with a man within the prohibited degree (*Mahram*). (Bukhari, Muslim)

18. Alqamah reported from his mother who said: Hafsa, daughter of Abdur Rahman, went to Ayesha with a thin veil over her. Ayesha tore it off and dressed her with a thick veil. (Malek)

19. Ayesha reported: The riders were passing by us while we were with the Apostle of Allah in *Ihram*. When they came by us, one of us let down her veil over her face from her head. When they had passed on, we removed it. (Abu Daud)

III - DISCUSSION IN THE LIGHT OF QUR'AN AND HADITH

The injunctions of the Qur'an and Sunnah regarding modesty and observing of *purdah* are elaborated and discussed as follows:-

1. Observance of modesty is as much obligatory for men as it is for the women. Verse 30 of chapter 24 of the Qur'an makes it obligatory on men to keep modesty. The following rules emanate from this verse.

a) The men should lower their gaze. They should cast down their looks. In other words it means that they should restrain their gaze and avoid looking at women intentionally or purposely. The men have been thus commanded to avoid gazing or looking at the women or at the *satar* of others or at indecent scenes.

There are so many Traditions reported in Hadith literature, according to which the Prophet (peace be upon him) strictly forbade his followers to cast their gazes at the women intentionally and unnecessarily. According to one Hadith, the Holy Prophet told Hadrat Ali: "Do not cast a second look after the first look. The first look (chance look) is pardonable but not the second one (which is generally intentional)." In another Tradition quoted in Abu Daud, it is related that Hadrat Muhammad (peace be upon him) turned

the face of his young cousin Fazal-b-Abbas to the other side, on one occasion, when the latter was fixing his gaze at a woman. The Prophet of Islam once declared: "Evil look at the other woman is the adultery of the eyes....." (Bukhari, Muslim). However, when it is really necessary to look at a woman, the same is permitted. The Prophet permitted to see a woman when one wants to marry her. Jurists have held that a physician can look at his female patient, a judge can look at a woman witness and in similar occasions, when it is very essential, a man can look at a woman.

b) They should observe modesty or they should be modest. According to the literal translation of the relevant Arabic words, the men should guard their private parts. Guarding the private parts means: firstly that they should not indulge in unlawful sex activities like fornication, adultery etc., and secondly they should abstain from exposing their private parts (*satar*) before others. In other words, the men should keep chaste and avoid exposing their *Satar*.

According to a Tradition, the Prophet (Allah's peace be upon him) prohibited the believers to expose their *satar* except before their wives. (Abu Daud)

For males, the *satar* is the part of man's body from the navel to the knee and this part of the body is not to be exposed intentionally before anybody. Thigh is included in *satar* and on some occasion the Prophet of Islam declared: "Do not expose your thighs"- (Abu Daud).

2. Rules regarding the observing of modesty by the women have been laid down in the verse 31 of chapter 24 of the Qur'an as follows:-

a) The believing women should lower their gaze and should not intentionally gaze at men or at the *satar* of others or at the indecent scenes.

According to the traditions of the Prophet of Islam, the commandments regarding restraining of gaze in case of

women are rather less strict as compared to those regarding restraining of gaze by men. It is reported that a deputation of some negroes came to Al-Madinah in 7 A.H. and they gave a performance of physical skill in the courtyard of the mosque of the Prophet and the Prophet (peace be upon him) himself showed that performance to his wife Hadrat Ayesha. Similarly according to another Tradition, the Holy Prophet instructed a divorcee Fatimah-b-Qais to observe her *Iddah* in the house of a blind man.

- b) They should be modest, protect their chastity and guard their private parts. Guarding of private parts means abstaining from indulging in illicit sex gratification and also to avoid exposing their private parts or *satar*. *Satar* of a woman is the entire body except her face and hands.

Hadrat Ayesha reports a Tradition that her sister Asma once came in thin clothes and the Prophet Muhammad (may Allah's peace be upon him) turned his face away from her and remarked: "O, Asma when a girl attains maturity, she is not permitted to expose any part of her body except face and hand."

- c) The women should not display their adornment except that which is displayed of itself. Adornment means ornamentation and decoration and, to use the modern terminology, make-up. The women have been prohibited to display their make-up except that which is apparent and which is beyond their control to hide. It means that they cannot intentionally display their adornment except that which becomes exposed without any intention or purpose on their part.

The words "what is apparent" or "which is displayed of itself" have always generated a lot of controversy and difference of opinion among the Muslim scholars and jurists. Even the Companions of the Prophet of Islam had different views about the interpretation of this expression. 'What is apparent' or 'which is displayed of itself', according to Abdullah-b-Abbas, means all those parts of the body which

normally remain exposed like hands and face. So, in his view, the hands and face can be kept exposed and need not be covered. On the other hand Hadrat Abdullah-b-Masud and his followers hold that hands and face and the adornment of these parts cannot be exposed. The view of Ibn Abbas has been accepted by the Hanafi jurists and their followers and according to them the woman can keep uncovered their hands and face alongwith adornments of these parts of the body.

- d) The women should draw their veils on their bosoms. It means the women should cover their bosom properly with a wrapper and should not keep exposed any part thereof.
- e) The women should not reveal their adornment except before the following:

I.- Their husbands. II.- Their fathers. It includes grandfathers and great grandfathers on paternal and maternal side. III.- Their husband's fathers: It includes grandfathers and great grandfathers on maternal and paternal side of their husbands. IV.- Their sons. It includes their grandsons through their sons as well as daughters. V.- Their husbands sons, including grand sons. VI.- Their brothers. VII.- Their brother's sons, including grandsons. VIII.- Their sister's sons, including grandsons. IX.- Their female associates: such women who are familiar or who are known or who are friends etc. X.- Their slaves. XI.- Male servants who lack sexual vigour and are not interested in sex matters. XII.- Children who have no knowledge of sex.

- f) The women should not stamp their feet on the ground so as to reveal their hidden adornment. So the sound of ornaments should not be audible.

3. The Qur'an in its verse 59 of chapter 33 commands the women to draw their cloaks close round them when they go abroad. The purpose of this injunction has been disclosed in the latter part of this verse in the words: "...so that they may be recognised (as decent and noble ladies) and not annoyed (being taken as women of ill repute)."

The Arabic word '*Jalabeeb*' is the plural of '*Jalbab*' which means cloak or gown or outer garment. A lot of heat has been generated about the interpretation of this verse. The Orthodox opinion is that the word '*Jalbab*' means veil and it should cover the face also. But the liberal commentators interpret it to mean that the women should wrap up their gowns or outer garments covering their heads, necks and bosoms but not faces and hands.

According to the Ulema, a Muslim woman cannot come out of her house unless she is properly covered with a veil which should cover her face also. On the other hand some scholars, who are not that orthodox, believe that the injunction does not include the covering of the face. According to them the women may come out of their houses properly dressed and covering themselves with sheets or gowns but they need not cover their faces, hands and feet.

4. Verse 60 of chapter 24 of the Holy Qur'an relaxes the conditions regarding *purdah* in respect of the old women who are past the prospect of marriage and no longer capable of exciting the passions of men. According to the verse, it is no sin for them if they discard their outer clothing in such a way as not to display or exhibit their adornment or make-up. However this permission cannot be used by those women who still have sexual desires or who want to attract others by displaying their embellishments.

5. The verse (Al-Qur'an 24:58) fixes three times of privacy for the believing couples - Before Fajr prayer, noon and after Isha prayer - and in these three times, even the personal servants and children should not come to them without first obtaining permission. Verses 32 and 55 of chapter 33 address the wives of the Prophet and, according to some scholars, do not pertain to the women in general.

IV - VIEWS OF THE SCHOLARS

Some opinions of eminent scholars regarding the injunctions of the Qur'an and Sunnah pertaining to *purdah* are cited below for the benefit of the readers.

1. To represent the view-point of Ulema, an extract from "The Meaning of the Qur'an" written by Maulana Abul A'la Maududi is presented. Maulana writes:

"*Jilbab* is a large sheet and *idna*' is to draw close and wrap up, but when this word is used with the associating particle '*ala*', it gives the meaning of letting something down from above. Some modern translators, under the influence of the West, have translated this word "to wrap up" so as to avoid somehow the command about covering of the face. But if Allah had meant what these gentlemen want to construe, He would have said: *yudnina ilai-hinna* and not *yudnina 'alai-hinna*. Anyone who knows Arabic knows that *yudnina 'alai-hinna* cannot merely mean "wrapping up." Moreover, the words *min jalabib-i hinna* also do not permit of this meaning. It is obvious that the preposition *min* here signifies a part of the sheet, and this also that wrapping up is done by means of a whole sheet and not merely by a part of it. The verse, therefore, clearly means this: The women should wrap themselves up well in their sheets, and should draw and let down a part of the sheet in front of the face."

He further quotes the following scholars to support his point of view: "Ibn 'Abbas also has made almost the same commentary. In his statements which have been reported by Ibn Abi Hatim and Ibn Marduyah, he says: "Allah has commanded the women that when they move out of their houses for an outdoor duty, they should conceal their faces by drawing and letting down over themselves a part of their sheets, keeping only the eyes uncovered." The same explanation of this verse has been given by Qatadah and Suddi.

All the great commentators who have passed after the period of the Companions and their immediate followers have

given the same meaning of this verse. Imam Ibn Jarir Tabari, in his commentary of this verse, says: "The respectable women should not look like the slave-girls from their dress when they move out of their houses, with uncovered faces and loose hair; they should rather draw and let down over them a part of their sheets or outer-garments so that no evil person may dare molest them." (Jami' al-Bayan, vol. XXII, p. 33)

'Allama Abu Bakr al-Jas as says: "This verse points out that the young woman has been commanded to conceal her face from the other men; when moving out of the house she should cover herself up well to express chastity and purity of character so that people of doubtful character do not cherish any false hope when they see her." (*Ahkam al-Qur'an*, vol. III, p. 458).

'Allama Zamakhshari says: "It means that they should let down a part of their sheet over themselves, and should cover their faces and wrap up their sides well." (*Al-Kashshaf*, vol. II, p. 221)"

2. The other view-point is represented by Justice Aftab Hussain in his book "The Status of women in Islam". He writes: "If the women are required to be covered from head to toe as the religious scholars would like them to be on their visit to public places no occasion would arise for the menfolk acting according to the injunction in verse Q. 24:30. A woman can see men from inside her covering. But in that case by complying with the letter of the injunction and keeping her gaze lower she incurs the risk of stumbling or knocking against other passers by. Evidently the two verses assume that the male and female can see one another which is possible only when the woman is not in a veil or does not cover her face. The *raison d'être* is that both the sexes should remain chaste and with this object in view they should avoid gazing at one another. The responsibility is reciprocal and not of the women alone to observe strict veiling of her face in order to save men from opportunities of being attracted towards them."

To reinforce his point of view, Justice Aftab Hussain further writes, relying upon the earlier commentators like Ibn Jarir and Imam Razi: "Ibn Jarir after reproducing the conflicting views in his commentary of the Qur'an adopted the liberal view that the exception to the injunction of concealment of adornments is of the hands and face. He said that the utterance nearer the truth is of those persons who hold it (the injunction about *ma zahara minha*) to mean face and the two hands which include eye powder, rings, wrist bracelet, and palm dye. "We consider this view truer because of the Ijma'a of the Ummah that it is necessary for every person offering prayer to hide his *satr* (privities). The prayer is not correct without its concealment. As for women it is lawful for her—rather it is necessary for her—that during her prayer she should keep her face and hands exposed. It is obligatory on her that she should hide the rest of her body. It is stated about the Prophet (pbuh) that he held it discretionary with women to keep half of their hands upto the elbows exposed. Now that this is proved by the Ijma'a of the learned, it becomes evident that it is lawful for a woman to keep uncovered those parts of the body which are not her *satr* in the same manner as it is for men to cover their *satr* because it cannot be prohibited to uncover what is not *satr*. And since it is lawful for the women to expose their face, hands and feet it is evident that by laying down *illa ma zahara minha* Allah has made an exception in their respects, because these parts of the body are (always) subject to exposure (during the discharge of their functions)."

Imam Fakhruddin Razi said that the entire body of a woman should be covered before a stranger except her face and hands since she is obliged to open her face and hands at the time of entering transactions of sale and purchase.

3. Maulana Fazl-ul-Karim in 'Al-Hadith' writes about *Purdah* as under: "It appears therefore from what has been stated above that Islam adopts a *via media* between the total casting off of the veil followed by free intermingling of sexes both outside and inside houses on one hand and the

given the same meaning of this verse. Imam Ibn Jarir Tabari, in his commentary of this verse, says: "The respectable women should not look like the slave-girls from their dress when they move out of their houses, with uncovered faces and loose hair; they should rather draw and let down over them a part of their sheets or outer-garments so that no evil person may dare molest them." (Jami' al-Bayan, vol. XXII, p. 33)

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To reinforce his point of view, Justice Aftab Hussain further writes, relying upon the earlier commentators like Ibn Jarir and Imam Razi: "Ibn Jarir after reproducing the conflicting views in his commentary of the Qur'an adopted the liberal view that the exception to the injunction of concealment of adornments is of the hands and face. He said that the utterance nearer the truth is of those persons who hold it (the injunction about *ma zahara minha*) to mean face and the two hands which include eye powder, rings, wrist bracelet, and palm dye. "We consider this view truer because of the Ijma'a of the Ummah that it is necessary for every person offering prayer to hide his *satr* (privities). The prayer is not correct without its concealment. As for women it is lawful for her—rather it is necessary for her—that during her prayer she should keep her face and hands exposed. It is obligatory on her that she should hide the rest of her body. It is stated about the Prophet (pbuh) that he held it discretionary with women to keep half of their hands upto the elbows exposed. Now that this is proved by the Ijma'a of the learned, it becomes evident that it is lawful for a woman to keep uncovered those parts of the body which are not her *satr* in the same manner as it is for men to cover their *satr* because it cannot be prohibited to uncover what is not *satr*. And since it is lawful for the women to expose their face, hands and feet it is evident that by laying down *illa ma zahara minha* Allah has made an exception in their respects, because these parts of the body are (always) subject to exposure (during the discharge of their functions)."

Imam Fakhruddin Razi said that the entire body of a woman should be covered before a stranger except her face and hands since she is obliged to open her face and hands at the time of entering transactions of sale and purchase.

3. Maulana Fazl-ul-Karim in 'Al-Hadith' writes about *Purdah* as under: "It appears therefore from what has been stated above that Islam adopts a *via media* between the total casting off of the veil followed by free intermingling of sexes both outside and inside houses on one hand and the

imprisonment within four walls of a house on the other. *Purdah* is a Persian word and connotes that it is a national local custom. It came into vogue during the Ommeyyade Caliph Walid II (Short history of the Saracens. p. 69). What the Qur'an enjoins on both men and women is decent dressing and deportment. *Purdah*, as popularly understood, is possible only among the upper and the middle classes. On the other hand, the labouring class of women who toil hard for their daily food are not expected to observe it."

4. Muhammad Asad in his commentary of the Qur'an explains his point of view regarding "what may be apparent" or "which may be displayed of itself" used in Verse 31 of Chapter 24 as under: "Although the traditional exponents of Islamic Law have for centuries been inclined to restrict the definition of "what may [decently] be apparent" to a woman's face, hands and feet—and sometimes even less than that—we may safely assume that the meaning of *illa ma zahara minha* is much wider, and that the deliberate vagueness of this phrase is meant to allow for all the time-bound changes that are necessary for man's moral and social growth. The pivotal clause in the above injunction is the demand, addressed in identical terms to men as well as to women, to "lower their gaze and be mindful of their chastity": and this determines the extent of what, at any given time, may legitimately - i.e., in consonance with the Qur'anic principles of social morality—be considered "decent" or "indecent" in a person's outward appearance."

Explaining verse 59 of chapter 33 he writes:

"The specific, time-bound formulation of the above verse (evident in the reference to the wives and daughters of the Prophet), as well as the deliberate vagueness of the recommendation that women "should draw upon themselves some of their outer garments (*min jalabibihinna*)" when in public, makes it clear that this verse was not meant to be an injunction (*hukm*) in the general, timeless sense of this term but, rather, a moral guideline to be observed against the ever-

changing background of time and social environment. This finding is reinforced by the concluding reference to God's forgiveness and grace."

5. Allama Abdullah Yusuf Ali comments on verse 24:31 thus: "The need for modesty is the same in both men and women. But on account of the differentiation of the sexes in nature, temperaments and social life, a greater amount of privacy is required for women than for men, especially in the matter of dress and the uncovering of the bosom."

Commenting upon verse 59 of chapter 33 he says: "The times were those of insecurity and they were asked to cover themselves with outer garments when walking abroad. It was never contemplated that they should be confined to their houses like prisoners."

CHAPTER 13

RIGHTS OF PROPERTY

I - VERSES OF THE QUR'AN

Following verses of the Holy Qur'an are generally quoted to support the property rights of the women:-

1. From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, a determinate share. (4 : 7)
2. And in no wise covet those things in which Allah hath bestowed His gifts more freely on some of you than on others: to men is allotted what they earn, and to women what they earn: but ask Allah of His bounty: for Allah hath full knowledge of all things. (4 : 32)

II - AHADITH OF THE HOLY PROPHET

Ahadith of the Prophet Muhammad (Allah's peace may be upon him) about the rights of woman regarding property are as follows:-

1. Jaber reported: My maternal aunt was divorced thrice. She then intended to get fruits of her palm trees. A man threatened her for her coming out. She came to the Prophet who said: Yes, take fruits of your palm trees. It is perhaps you will make gift or do some good act. (Muslim)
2. Jaber reported that the wife of Sa'ad-b-Rabiy came with her two daughters by Sa'ad to the Messenger of Allah. She said: O Messenger of Allah! They are the two daughters of Sa'ad. Their father was martyred with you on the day of Uhud, and their uncle has taken their property. He has not left any property for them, and they cannot be married unless they have got some property. He said: Allah will decide about that.

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Then the verse of inheritance was revealed. So the Prophet sent for their uncle and said: Give the two daughters of Sa'ad two-third and give their mother one-eighth, and what remains is for you. (Abu Daud, Ibn Majah, Tirmizi)

3. It is reported by Zainab, wife of Abdullah-b-Mas'ud that her husband was a man of little means and she wanted to spend for him out of her wealth. When she asked the Prophet (peace be upon him) whether her charity on her husband would suffice, the Prophet (PBUH) said: There will be two rewards—the reward of relationship and the reward of charity. (Bukhari, Muslim)

III - RIGHTS DISCUSSED IN THE LIGHT OF QUR'AN AND HADITH

Islam does not make distinction between man and woman so far as their rights of property are concerned. The women enjoy equal rights in this field and their position is in no way inferior to that of men. The Qur'an says: From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large - a determinate share".- (4 : 7)

So the Holy Qur'an makes the women alongwith men shareholders in inheritance of their parents and near relations. In its verses 11, 12 and 176 of chapter 4, the Qur'an confers share in inheritance on the woman in her various capacities as daughter, mother, wife and sister.

The other way of earning fortune or acquiring property is through one's own efforts and hardwork. About this possibility the Qur'an points out by saying: "Unto men a fortune from that which they have earned and unto women a fortune from that which they have earned"-(4 : 32). Earning certainly includes the reward of good deeds in the next world, however it also includes earning of fortune in this world. And in this the woman has got equal rights. Like man, a woman can

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also earn, acquire, own, manage and dispose of property at her discretion.

1. She can acquire property through the following means which are applicable in the case of man also.

- a) through her own earnings.
- b) through purchase.
- c) through gift.
- d) through will
- e) through inheritance.

She has an additional right to acquire property which is not available to man i.e. through *Mahr* or dower which she is entitled to receive from her husband.

2. She can own the property, possess it, manage it and enjoy its income. Over her property she has the exclusive and absolute rights. Her father, her husband or her brothers or her children have no legal right over her property. If the husband is poor and she spends out of her earning or property for the family, she is entitled to claim it from her husband when he becomes prosperous. It is because she has no legal obligation to spend for her family out of her personal wealth, her husband being responsible for her and children's maintenance.

3. She has got full rights regarding the alienation of her property. She can dispose it of by sale, transfer or settlement. She can gift it away to her husband, children or anybody. She can arrange for its disposal (upto one third of it) through will.

IV - VIEWS OF EMINENT SCHOLARS

Views of some eminent scholars regarding woman's property-rights are quoted below to establish the fact that a Muslim woman has got absolute rights in this field.

Dr. Hamidullah: "The perfect and complete individuality of the person of the woman is manifest in a most striking manner in the matter of property. According to the Islamic law, the woman possesses the most absolute right over her

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property. If she has attained majority, she may dispose of it according to her will without reference to anybody else, whether it be her father, brother, husband or son or any other person. There is no difference in this matter between a man and a woman. The property of a woman cannot be touched even if her husband or father or any other relative has liabilities exceeding his assets. Similarly, these relatives are not held responsible if she contracts debts. A woman has the same rights as man for acquiring property. She may inherit it, receive it in gift or donation, earn it by her own work and toil; and all this remains here and hers alone. She is absolute mistress of her property to enjoy it or to give it to whomsoever she likes as a gift, or to dispose of it, by sale or any other legal means, at her will. All these rights are inherent in a woman; there is no question of obtaining them through special contracts, with the husband for instance or by an award depending on somebody else."

2. Aftab Hussain J, the author of "The Status of Women in Islam", writes: "As summed up in the Age of Faith by Will Durant, Islam placed woman and man on the same footing in economic independence, property rights and legal process. She might follow any legitimate profession, keep her earnings, inherit property and dispose of her belonging at will."

At another place, he writes: "Marriage confers no right on either party over the property of the other. The legal capacity of the wife is not sunk in that of the husband; she retains the same powers of using and disposing of her property, or of entering into all contracts regarding it, of suing and being sued without his consent, as if she were still unmarried."

CHAPTER 14

WOMAN AND EDUCATION

I - VERSES OF THE QUR'AN

It is obligatory on every Muslim male and female to get education, acquire learning and search for knowledge. The woman has got, therefore, equal rights with the man, if not more, to acquire education and learning. Following verses of the Qur'an are ordinarily quoted to impress upon the believers, men and women, the importance of knowledge and to motivate them to get education.

1. And He taught Adam the nature of all things; then He placed them before the angels, and said: "Tell Me the nature of these if ye are right." They said: "Glory to Thee: of knowledge we have none, save what Thou hast taught us: in truth it is Thou Who are perfect in knowledge and wisdom." He said: "O Adam! tell them their natures." When he had told them, Allah said: "Did I not tell you that I know the secrets of heavens and earth, and I know what ye reveal and what ye conceal?" (2: 31-33)
2. He granteth wisdom to whom He pleaseth; and he to whom wisdom is granted receiveth indeed a benefit overflowing; but none will grasp the Message but men of understanding. (2: 269)
3. O ye who believe! when ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties... (2: 282)
4. There is no god but He: that is the witness of Allah. His angels, and those endued with knowledge standing firm on justice. There is no god but He, the Exalted in Power, The Wise. (3: 18)

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5. Nor should the Believers all go forth together: if a contingent from every expedition remained behind, they could devote themselves to studies in religion, and admonish the people when they return to them,- that thus they (may learn) to guard themselves (against evil) (9: 122)

6. High above all is Allah, the King, the Truth! be not in haste with the Qur'an before its revelation to thee is completed, but say, "O my Lord! advance me in knowledge." (20: 114)

7. And recite what is rehearsed to you in your homes, of the Signs of Allah and His Wisdom: for Allah understands the fine mysteries and is well-acquainted (with them). (33:34)

8. O ye who believe! when ye are told to make room in the assemblies, (spread out and) make room: (Ample) room will Allah provide for you. And when ye are told to rise up, rise up, to (suitable) ranks (and degrees), those of you who believe and who have been granted (mystic) knowledge: and Allah is well-acquainted with all ye do. (58: 11)

9. Nun, by the pen and by the (record) which (men) write,- thou art not, by the grace of thy Lord, mad or possessed. (68: 1-2)

10. Proclaim! (or read) in the name of thy Lord and Cherisher, Who created—created man, out of a (mere) clot of congealed blood: Proclaim! and thy Lord is Most Bountiful,- He Who taught (the use of) the Pen,- taught man that which he knew not. (96: 1-5)

II - AHADITH OF THE PROPHET

The Traditions of the Prophet Muhammad (may peace be upon him) about the importance of knowledge and need of education for the men and woman are cited below:-

1. Anas reported that the Messenger of Allah said: Search for knowledge is compulsory upon every Muslim male and Muslim female. (Ibn Majah)

2. Anas reported that the Messenger of Allah said: whoso goes out in search of knowledge, he is in the path of Allah till he returns. (Tirmizi)
3. Anas reported that the Messenger of Allah said: Search knowledge though it be in China. (Baihaqi)
4. Sakhbarah-al-Azdi reported that the Messenger of Allah said: Whoever searches after knowledge, it will be expiation for his past sins. (Tirmizi)
5. Ayesha reported: Superiority in education is better than superiority in divine service. (Baihaqi)
6. Ali reported that the Messenger of Allah said: Learning is treasure-house whose keys are queries. (Abu Nayeem)
7. Ibn Mas'ud reported that the Messenger of Allah said: There is no envy except for two: a man whom Allah has given wealth and whom he gave power for spending it for cause of truth, and a man whom Allah has given wisdom and who acts upto it and teaches it (to others). (Bukhari and Muslim)
8. Kasir-b-Qais reported: certainly the superiority of a learned man over the pious worshipper is like the superiority of the full moon at full moon-lit night over the rest of the stars; and verily the learned are the heritage of the prophets, and the prophets left no heritage, no silver or gold coins, but they left learning. So whoso acquires it, acquires a sufficient fortune. (Ahmad, Tirmizi, Abu Daud)
9. Ibn Abbas reported that the Messenger of Allah said: To the devil, a learned theologian is stronger than a thousand pious worshippers. (Tirmizi, Ibn Majah)
10. Abu Omamah al Bahili reported: Two persons were mentioned to the Messenger of Allah, one of the two is a pious worshipper and the other a learned man. The Messenger of Allah said: The superiority of the learned man over the pious worshipper is like my superiority over the meanest of you. (Tirmizi)

11. The Apostle of Allah said: Whoever brings up three girls, teaches them culture and good manners, marries them and treats them well, for him is Paradise. (Abu Daud)
12. Malik-b-Huwairith reported that there were a few young men who stayed with the Prophet for twenty days to know about matters of religion. When he felt that they were anxious to go home, he said; Go to your families, stay with them and tell them about religion and practise it. (Bukhari)
13. Once a man wanted to seek a woman in marriage. The Prophet asked: Have you got any thing with you which we may give to her as dower! The man searched and could not find anything. The Prophet asked: Have you got any portion of the Qur'an with you? "Yes", said he, "such and such verse." The Prophet married him to the woman and directed him to teach those verses to her. (Bukhari, Muslim)
14. Abu Musa Al-Ash'ari reported that the Messenger of Allah said: ...A man with whom there is a slave girl, who teaches her manners and then makes her manners good; who gives her education and imparts it well, and who then emancipates her and afterwards takes her in marriage - there are double rewards for him. (Bukhari, Muslim)
15. Hadrat Umar wrote to the people of Kufah: Teach Surah Nur to your wives". (Tafsir Qurtubi)

III - RIGHTS DISCUSSED IN LIGHT OF QUR'AN AND HADITH

Since it is obligatory on every Muslim male and female to acquire knowledge, the woman has got as much right as the man has got for acquiring knowledge and education. Hence the injunctions of the Qur'an and Sunnah are equally applicable to men and women.

1. The importance which the Qur'an gives to education and learning can be judged from this fact that the first few verses of the Qur'an which were revealed on Prophet Muhammad (Allah's peace be upon him) instructed him to read. Al-Qur'an

says: "Read: In the name of thy Lord Who createth, createth man from a clot. Read: And thy Lord is the most Bounteous, Who teacheth by the pen, Teacheth man that which he knew not"-(96: 1-5). So the Holy Qur'an, which is the revealed book of Islam, starts with the word 'read', if put in the chronological order. In the verses mentioned above, the Qur'an uses three words 'read', 'teaches' and 'pen', which shows how much is the importance of reading, learning, writing and teaching.

The Prophet of Islam made it obligatory on every Muslim male and female to acquire knowledge. According to another Tradition he exhorted his followers to search knowledge though they have to go as far as China. In another Hadith it is reported that the search for knowledge is an expiation for one's sins.

2. The prayers of the Prophets and the righteous people have been mentioned in the Qur'an. The prayer of the Prophet of Islam given in the Qur'an is about increase in knowledge. Allah commanded His messenger to pray to Him in these words: "...My Lord! Increase me in knowledge" (Al-Qur'an 20:114). This has been the most popular prayer of the followers of Muhammad (may Allah's peace be upon him) through centuries and even the kids in the Muslim homes who can hardly speak start chanting this prayer from the very childhood.

3. Human being is the best of Allah's creation and it is because Allah has given him knowledge. It is on account of the learning and knowledge that man's superiority was established over the Angels. Allah taught Adam all the names, and then showed them to the Angels asking them to inform Him about them which they could not, but Adam did (Al-Qur'an 2:31-33). Wisdom or knowledge is a great treasure and everlasting wealth. He is Allah Who gives wisdom to whom He likes. Unto whom wisdom is given, he has indeed been blessed with a great treasure (Al-Qur'an 2: 269). The Prophet of Islam calls the learning as a treasure-house and he declared that

superiority in education is better than superiority in divine service.

4. Islam attaches so much importance to education that the Qur'an instructs the believers that all of them should not go out for fighting, rather they should leave some of them behind who should acquire sound knowledge of religion and should teach the others when they return from fighting (9:122) Jihad is obligatory on every adult male Muslim in case the security of Islamic state is in danger. But even in such a state of emergency and critical position, the importance of learning is not being ignored. The believers are being commanded that all of them should not go forth together for participation in *Jihad*. It would be better if they leave some contingent behind who should devote themselves to studies in religion and should acquire the capability to teach others.

The Prophet of Islam released some of the prisoners who had been captured in the Battle of Badr, without ransom on the condition that each of them should teach at least ten Muslim children how to read and write. This shows how the Prophet viewed the need of education and literacy for the Muslim children.

5. Most of the commentators of the Qur'an are unanimously of the view that verse 34 of chapter 33 is addressed to the wives of Muhammad (may Allah's peace be upon him). The wives of the Prophet are being instructed to learn which is recited in their homes of the Qur'an and wisdom. In the sublime company of the Prophet, whatever they learn by closely observing his conduct and attentively listening to his discourses of wisdom, they should impart it to the members of Muslim Ummah very faithfully and without any omission or commission.

The history of Islam tells us that the wives of the Prophet did acquire sound learning of the Qur'an and the Traditions in the company of Muhammad (Allah's peace be upon him) and they played indeed an admirable role in popularising the

teachings of the Qur'an and the Ahadith of the Prophet of Islam.

Indirectly this injunction of the Holy Qur'an may also be taken to be applicable to the Muslim women in general. The role of the mothers in training and educating the future generations is well known and thus the Qur'an impresses upon them to get education and thus educate in turn the future of the Ummah.

6. According to verse 11 of chapter 58 of the Qur'an, Allah will give high ranks and rewards to those believers who have acquired knowledge and learning. The Qur'an (verse 18 of chapter 3) includes the learned persons among the list of the witnesses who give evidence about the Unity of God. Do you know who are the witnesses? They are Allah (Himself), the angels and the men of learning! Can there be any higher rank than this? Obviously, no. According to a Hadith, the rank of a learned man is higher than that of a pious worshipper. According to another Hadith, the man who goes out in search of knowledge is in the path of Allah (*Jihad*) till he returns.

7. The importance of the writing and the pen (symbol of writing) is that at one place in the Qur'an (68:1-2), Almighty Allah swears by the pen and at another place He commands the believers to reduce their contracts and agreements in writing. (Al-Qur'an 2: 282)

IV - MEASURES TAKEN BY THE PROPHET TO EDUCATE WOMEN

Since the human beings, male as well as females, are responsible and accountable for their actions and deeds on the Day of Judgement, they are required to have the knowledge of the teachings of the Qur'an and Sunnah particularly the basic knowledge of the fundamentals of Islam like Belief, Prayer, *Zakat*, Fasting, *Hajj*, etc. Besides that, they are also obliged to know the Attributes of Allah, knowledge of lawful and unlawful, right and wrong, their religious obligations, laws promulgated by the Qur'an regarding marriage, dower,

divorce, inheritance, will, adultery, murder, theft etc. A woman is also required to acquire such education and learning which is fundamental to her basic area of activity, i.e., management of home, education, training and bringing up of children. Education should prepare her to become good wife, good mother and good housekeeper. She should be educated and trained in those branches of learning which make her useful in her primary sphere of work. She also should be made a good human being and a useful citizen.

The Prophet of Islam himself took keen interest in the training and education of the Muslim community. He made suitable arrangements for the education of Muslim men as well as women. He was so much concerned for the education of the women that whenever he felt that the women could not hear him because they were seated behind the men in the mosque, he would get closer to them and repeated his instructions. It is reported in Sahih Bukhari from Abu Said Khudri that some women came to the Prophet and complained: 'Men are always gathered in your presence, and we cannot benefit. Therefore, appoint one day for us. So the Prophet fixed one day for them, during which he would go to them, listened to their problems, told solutions and gave them instructions regarding their religious, social and family obligations. Sometimes, he would depute some learned companion to educate the women on various issues. It is reported by Umme Atiyyah: When the Prophet came to Madinah, he sent Hadrat Umar to educate the women of Ansars. Hadrat Ayesha, wife of the Prophet, also used to teach the women as well as men. According to a tradition, reported in section II above, the Prophet said: whoever brings up three girls, teaches them culture and good manners, marries them and treats them well, for him is Paradise." Once a few youngmen stayed with the Prophet for few days and learnt from him some teachings of religion. When they departed, he advised them to teach their wives what they had learnt. On another occasion, the Prophet married a woman with a man who had got nothing to give his wife in dower, on the

condition that he would teach his wife two or three verses of the Holy Qur'an which he knew, in payment of dower. According to another Hadith, the Prophet advised the men to teach the last two verses of Surah Al-Baqarah to their wives.

V - ROLE OF THE MUSLIM WOMEN IN EDUCATION

In the early period of Islam, the wives of the Prophet Muhammad (Allah's peace be upon him) and other women companions played a great role in the spread of learning and knowledge of the Qur'an and Sunnah. Encyclopaedia of Seerah sums up the contribution of various Muslim women in different fields of learning as under: "A'ishah, Hafsa, Umm Salamah and Umm Waraqah knew the whole of the Qur'an by heart. (*Fath al-Bari*). Hind bint Asad, Umm Hisham bint Harithah, Ra'ita bint Hayyan and Umm Sa'd bint Sa'd ibn Rabi' knew by heart part of the Qur'an. Umm Asad also used to lecture on the Qur'an." (*Usd al-Gabah*)

'A'ishah was well-versed in commentary of the Qur'an (*Ilm-i Tafsir*) and had a great knowledge of the *hadith*. Among others, Umm 'Atiyah, Asma' bint Abi Bakr, Umm Hani, and Fatimah bint Qais were also great narrators of *hadith*. (*ibn Sa'd*)

In jurisprudence, 'A'ishah had few equals and Umm Salamah also gave many legal decisions. Among others, Safiyah, Hafsa, Umm Habibah, Juwairiyah, Maimunah, Fatimah Zahra, Umm Sharik, Umm 'Atiyah, Asma' bint Abi Bakr, Haila bint Qanif, Khaulah bint Tuwait, Umm al-Darda', 'Atikah bint Zaid, Sahlah bint Suhail, Fatimah bint Qais, Zainab bint Abi Salamah, Umm Aiman and Umm Yusuf need special mention. (*Ibn Qayyim: I'lam al-Muwaqqi'in*).

Apart from the *Islamic* sciences, the women companions had a great knowledge of other things. For example, Umm Salamah had complete knowledge of hidden knowledge (*Ilm-i-Asrar*). In the subject of speech, Asma' bint Sakan was famous and in interpretation, Asma bint Umis was well-known. (*Ibn Sa'd, Musnad and Isabah*). In medicine and

surgery, Rufadah Aslamiyah, Umm Muta', Umm Kabshah, Hamnah bint Jahsh, Mu'adhah, Laila, Umaimah, Umm Ziyad, Rubayyi' bint Muawwidh, Umm 'Atiyah and Umm Sulaim were quite well-known. (*Isabah*).

In poetry, Khansa, Su'da, Safiyah, 'Atikah, Umamah, Muridiyah, Hind bint Harith, Zainab bint 'Awwam Urwi, 'Atikah bint Zaid, Hind bint Uthathah, Umme Aiman, Qanila Abdurriyah, Kabshah bint Rafi, Maimunah Balmiyah, Na'am, Ruqaiyah and Umm Ziyad are very famous. Khansa was unparalleled among women in the art of poetry."

According to Imam Ibn Qayyim, the companions of Allah's apostle whose legal decisions are preserved are just over one hundred and thirty and these included both men and women. In the first line of jurists who are seven, the name of Ayesha is included alongwith Umar, Ali and Ibn Masud. In the second group, name of Umme Salamah is included alongwith the male companions like Abu Bakr and Uthman. In the third group the names of women are Umme Atiyah, Hafsa, Umme Habibah, Safiyah, Asma bint Abu Bakr, Umme Sharih Fatimah, Juwairiyah, Maimunah, Khaulah etc.

It would not be without interest to mention here the contribution of Ayesha the wife of the Prophet. She had learnt the Qur'an by heart. She was one of the great huffaz (one who learns a thing by heart) companions of Hadith. The total number of Ahadith reported by her is 2210 and she is fourth among the narrators of Hadith, the other being Abu Hurairah, Abdullah bin Umar and Anas.

A companion of the calibre of Abu Musa Ash'ari states." whenever we, the Companions of Allah's Messenger, felt any difficulty with respect to any Hadith and we enquired about it of Ayesha, we found that certainly she had knowledge of it". (*Tirmizi*)

Encyclopaedia of Seerah quotes Hafiz Ibn Hajr who writes about Ayesha:

'A'ishah learned many things from the Prophet and lived for about fifty years after him. People gained a great deal from her and reported many commands and manners of the Prophet from her; so much so, it is said, that about one fourth of the commands were transmitted by her." (*Fath al-Bari*, Vol. 7, p. 82-82).

At another place, Hafiz ibn Hajr, after counting eighty eight persons who benefited from 'A'ishah in *hadith*, writes that apart from these, a large number of people reported from her. And these included political figures such as Amr ibn al-'As, Abu Musa Ash'ari and Abdullah ibn Zubair; jurists and *muhaddith* such as Abu Hurairah, Ibn Abbas and Ibn Umar; eminent *tabi'un* such as Sa'id ibn Musayyab and Ibn Qais; free men and slaves; and men as well as women. (*Tahdhib al-Tahdhib*, Vol. 12, p. 433.)

CHAPTER 15

WOMAN AND JIHAD

I - VERSES OF THE QUR'AN

Some of the verses of the Holy Qur'an which exhort the believers to fight in the way of Allah, with their wealth and lives, are cited as follows:-

1. Fight in the cause of Allah, those who fight you, but do not transgress limits; for Allah loveth not transgressors. (2 : 190)
2. Go ye forth, (whether equipped) lightly or heavily, and strive and struggle, with your goods and your persons, in the Cause of Allah. That is best for you, if ye (but) knew. (9 : 41)
3. No blame is there on the blind, nor is there blame on the lame, nor on one ill (if he joins not the war): But he that obeys Allah and His Apostle, (Allah) will admit him to gardens beneath which rivers flow; and he who turns back, (Allah) will punish him with a grievous penalty. (48 : 17)

II - AHADITH OF THE PROPHET

The Traditions of the Prophet Muhammad (peace be upon him) about the participation of Muslim women in *Jihad* are presented as follows:-

1. Umme Atiyyah reported: I accompanied the Holy Prophet in seven battles. I remained in the rear for their luggages, prepared food for them, nursed the wounded and attended the sick. (Muslim)
2. Anas reported that the Holy Prophet used to take Umme Sulaim and some other women of Ansar with him in *Jihad*. The women used to give water and nurse the wounded. (Muslim)

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3. It has been reported on the authority of Anas that on the day of Hunain, Umme Sulaim took out a dagger she had in her possession. Abu Talha saw her and said: Messenger of Allah, this is Umme Sulaim. She is holding a dagger. The Messenger of Allah asked her: What for are you holding this dagger? She said: I took it so that I may tear open the belly of a polytheist who comes near me. The Messenger of Allah began to smile.... (Muslim)

4. Anas-b-Malik reported: On the Day of Uhud some of the people, being defeated, left the Holy Prophet, but Abu Talha stood before him covering him with a shield. The narrator further reported: I saw Ayesha-bint-Abu Bakr and Umme Sulaim. Both of them had tucked up their garments, so I could see the anklets on their feet. They were carrying water skins on their backs and would pour water into the mouths of the people. They would then go back (to the well), would fill them again and would return with water.... (Muslim)

5. Yazid-b-Hurmuz reported that Najda wrote to Ibn Abbas inquiring of him five things... (Among them was): Tell me whether the Messenger of Allah took women to participate with him in *Jihad*; (if he did), whether he allotted them a regular share from the booty?... Ibn Abbas wrote to him: The Messenger of Allah did take them to the battle... They would treat the wounded and were given a reward from the booty, but he did not assign any regular share for them.... (Muslim)

6. Abdullah-b-Umar reported the Messenger of Allah forbade to kill women and children. (Bukhari-Muslim)

III - WOMEN'S PARTICIPATION IN JIHAD

The Arabic word *Jihad* is derived from the verb *Jahada* which means "he exerted." So literally *Jihad* means 'exertion' or 'striving'. It generally means, however, a war undertaken for a just cause and for the defence of Islam. The Qur'an permits war in case of defence only. No aggressive war is allowed. The Qur'an says: "Fight in the way of Allah against

those who fight against you, and begin not hostilities. Lo! Allah loves not aggressors". (2: 190)

Jihad is of two types; '*Jihad bil mal*' and '*Jihad bil nafs*' which means striving with one's wealth and striving with one's life. In other words, one can participate in *Jihad* by actually fighting against the enemy with his life or by contributing his wealth in the war fund. The Qur'an commands the believers to wage both the types of *Jihad* when it says: "...And struggle, with your goods and your persons, in the cause of Allah. That is the best for you, if ye (but) knew" (9: 41)

In case of invasion, it is the bounden duty of every male adult Muslim citizen of an Islamic state to take up arms and defend his motherland. Though it is not obligatory for women to participate in actual fighting, yet they have not been barred by the Qur'an and Sunnah to do so. At least the Qur'an has not counted them in the list of the persons who have been exempted from participation. It says: "There is no blame for the blind, nor is there blame for the lame, nor is there blame for the sick (that they go not forth to war)" - (48:17). So far as *Jihad* with wealth is concerned, it is the duty for both the men and women to contribute, according to their means, to the defence fund, and the history is witness of many examples of the sacrifices of Muslim women when they sold their ornaments (so dear to the female nature) for such contributions.

Many incidents have been reported in the history of Islam when the women rendered very valuable services in the battlefield like nursing of the wounded warriors, providing them water, preparing food for them, looking after their luggage etc. Even they did not hesitate to take up arms in case of need. It is recorded in *Sahih Muslim* that the Prophet (peace be upon him) used to take Muslim women like Umme Atiyyah, Umme Sulaim and many others who used to nurse the wounded, attended the sick and provided them water. Even Hadrat 'Ayesha the wife of the Prophet participated in the Battle of Uhud and supplied water to the *mujahideen*.

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WOMAN AND JIHAD

Umme Sulaim even took up a dagger to tear open the belly of a polytheist in the Battle of Hunain. Safiyah-bint-Abdul Muttalib killed a Jew who was spying for the enemies of Islam during the Battle of the Confederates.

Samiyah-bint-Khabat, mother of the famous companion Hadrat Ammar-b-Yasir, was the first Muslim whose blood was shed in the way of Allah. She was mercilessly persecuted and ultimately killed by Abu Jahl, the arch enemy of Allah and His Messenger, for her acceptance of Islam and refusal to return to disbelief. So the honour of being first martyr of Islam goes to a woman as the honour of being first who accepted Islam had already been achieved by a woman (Hadrat Khadijah wife of the Prophet (PBUH)).

According to Ibn Abbas, the Prophet of Allah used to give reward to the women who participated in *Jihad* out of the booty, though he did not assign for them any regular share.

CHAPTER 16

WOMAN AND EMPLOYMENT

I - VERSES OF THE QUR'AN

Though earning of sustenance for the family is basically the duty of man, yet Islam does not prohibit a woman to engage in any employment, business, profession or vocation, to earn or contribute in the income of the family in case of need. Following verses of the Holy Qur'an are ordinarily quoted to support woman's participation in this field:-

1. And in no wise covet those things in which Allah hath bestowed His gifts more freely on some of you than on others: to men is allotted what they earn, and to women what they earn: But ask Allah of His bounty: For Allah hath full knowledge of all things. (4 : 32)
2. And when he arrived at the watering (place) in Madyan. He found there a group of men watering (their flocks), and besides them he found two women who were keeping back (their flocks): He said: "What is the matter with you?" they said: "We cannot water (our flocks) until the shepherds take back (their flocks): And our father is a very old man," (28 : 23)
3. That man can have nothing but what he strives for; that (the fruit of) his striving will soon come in sight; then will he be rewarded with a reward complete; (53 : 39-41)

II - AHADITH OF THE HOLY PROPHET

The Traditions of the Prophet (PBUH) of Islam on the subject are quoted below:-

1. Jaber reported: My maternal aunt was divorced thrice. She then intended to get fruits of her palm trees. A man threatened her for her coming out. She came to the Prophet

who said: Yes, take your fruits of palm trees. It is perhaps you will make gift or do some good act. (Muslim)

2. Umme Atiyyah reported, "I accompanied the Prophet of God in seven battles. I remained in the rear for their luggages, prepared food for them, nursed the wounded and attended the sick." (Muslim)

III - WOMEN'S RIGHT TO EARN INCOME

Earning of livelihood for the family is basically a duty of the man. Islamic society makes the man responsible for providing bread and butter for his wife and children and meeting their expenses. However, there may arise situations where the women have also to work for earning livelihood. So the Qur'an does not debar them from working. This right of earning income through lawful (*Halal*) means is granted to a woman by the Revealed Book when it says: "...to men is allotted what they earn, and to women what they earn"-(4: 32). Earning signifies the reward of good deeds in the next world as well as earning of provision for the family in this world.

The incident referred to by the Qur'an in verse 23 of chapter 28, according to most of the Commentators, pertains to the daughters of Hadrat Shoaib,¹ one of whom later became the wife of Prophet Moses. Hadrat Shoaib was an old man and could not look after his flock of sheep. His young daughters tended the sheep and worked for grazing and watering the flock. Prophet Moses, one day reached Madyan and found there some men watering their sheep when two women were holding back. He offered his services and watered their sheep. After-wards, he was employed by their father with the condition that he would be married with one of the girls in consideration of his services. From this incident reported by the Qur'an, some scholars infer that women can engage in the earning of bread for the family under economic compulsions.

1. In Tafsir Ibn Kathir, there is a lengthy discussion about the old man of Madyan. Some scholars hold that he was Hadrat Shoaib, while others hold that he was some other pious old man.

According to some authentic Traditions of Prophet Muhammad (may Allah's peace be upon him), he permitted the women to earn for themselves and for their family. A Hadith quoted in *Sahih Muslim* states that the Prophet permitted a woman who had been divorced, to visit her garden and take her fruit. According to another Hadith reported by Umme Atiyyah, the Prophet allowed the women to render services in *Jihad* like preparing food, nursing the wounded etc. From this we can conclude that the women can adopt the profession of a nurse and of a doctor.

Hadrat Saudah, the wife of the Prophet (PBUH), was skilled in tanning the skins of the animals and used to make a considerable amount of earning from this vocation. Abdullah-b-Mas'ud was mostly engaged in religious work and had no time to earn for the family. So his wife used to work as artisan to earn livelihood for the family. When the Prophet came to know about it, he assured her reward for this in the hereafter.¹ Khaulah-b-Thalabah also used to meet the needs of her husband who was a poor man and earned nothing and she told this thing to the Prophet.²

A lady named Qailah was a trader and bought and sold goods. Once she met the Prophet and asked him some questions about trade. It is also narrated about Asma-b-Makhramah that she received perfumes from her son in Yemen and sold them.³

There are many such incidents reported in the books of history which establish that the women used to work in the days of the Prophet to support their families and the Prophet never objected to their such engagements. From such incidents we cannot resist the conclusion that the Muslim women can engage themselves in lawful professions to earn income for supporting their families in case of need provided they

1. (Tabaqat Ibn Sa'ad quoted by Encyclopaedia of Seerah).

2. (Tabaqat Ibn Sa'ad quoted by Encyclopaedia of Seerah).

3. (Tabaqat Ibn Sa'ad quoted by Encyclopaedia of Seerah).

comply with the instructions of the Qur'an and *Sunnah* regarding modesty.

IV - VIEWS OF THE EMINENT SCHOLARS

1. *Encyclopaedia of Islam* says: "Islam does not restrict the economic activity of women; what it restricts are those factors which might encourage or incite the spread of obscenity in society. If women take proper care of these things and observe *Shari'* instructions, they are not barred from engaging in any lawful activity outside their houses which is necessary for their livelihood, for *Allah's* Messenger explicitly permitted this in these words: "O women! You have been allowed by *Allah* to go out for your needs." (*Bukhari*)
2. Dr. Hamidullah writes: "In every epoch of Islamic history, including the time of the Prophet, one sees Muslim women engaged in every profession that suited them. They worked as nurses, teachers, and even as combatants by the side of men when necessary, in addition to being singers, hair-dressers, etc. Caliph 'Umar employed a lady, Shifa' bint 'Abdallah, as inspector in the market at the capital (Madinah), as Ibn Hajar (*Isabah*) records. The same lady had taught Hafsa, wife of the Prophet, how to write and read. The jurists admit the possibility of women being appointed as judges of tribunals, and there are several examples of the kind. In brief, far from becoming a parasite, a woman could collaborate with men, in Muslim society, to earn her livelihood and to develop her talents." (*Introduction to Islam*)
3. Justice Aftab Hussain, in his book "Status of the women in Islam" writes: "Careerism among women is not hobby. The object of some in choosing a career is to make themselves useful to the society. For them money is a secondary consideration. For others there are economic compulsions. The uneducated widows or deserted wives generally earn money by sewing and needle work but literate women avail of their talents in finding many vocations for living honourably. During this age of inflations and unpredictable rise in the costs of living many an educated women assist their husbands,

parents, brothers and sisters by putting to use their talents for earning honest money, to make the two ends meet. And then the question is why they should not turn out to be useful members of the *Ummah* or society. One thing which is common among these ladies is that with few exceptions, in fact much fewer than males, they entertain considerable love and reverence for Islam, the Prophet (PBUH) and the saints. They are generally chaste and guard their modesty. No scandal is attached to them. They marry, have children but persevere in their careers."

CHAPTER 17

RIGHT TO PROTECTION OF HONOUR

I - INJUNCTIONS OF THE QUR'AN

Various measures taken by the Qur'an for the protection of person and honour of the women are manifested by the following verses:

1. Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils). (17: 32)
2. The woman and the man guilty of adultery or fornication, - flog each of them with a hundred stripes; let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the believers witness their punishment. (24: 2)
3. And those who launch a charge against chaste women, and produce not four witnesses, (to support their allegation), - flog them with eighty stripes and reject their evidence ever after: for such men are wicked transgressors. (24: 4)
4. Those who slander chaste women indiscreet but believing, are cursed in this life and in the Hereafter: for them is a grievous penalty. (24: 23)
5. O ye who believe! enter not houses other than your own, until ye have asked permission and saluted those in them: that is best for you, in order that ye may heed (what is seemly). (24: 27)
6. Say to the believing men that they should lower their gaze and guard their modesty: that will make for greater purity for them: and Allah is well acquainted with all that they do. (24: 30)
7. And say to the believing women that they should lower their gaze and guard their modesty; that they should not

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display their beauty and ornaments except what (must ordinarily) appear thereof: that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers or their brothers' sons, or their sisters' sons, or their women, or the slaves whom their right hands possess or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments, and O ye believers! Turn ye all together towards Allah, that ye may attain bliss. (24: 31)

8. Let those who find not the wherewithal for marriage keep themselves chaste, until Allah gives them means out of His grace. And if any of your slaves ask for a deed in writing (to enable them to earn their freedom for a certain sum), give them such a deed if ye know any good in them; ye, give them something yourselves out of the means which Allah has given to you. But force not your minds to prostitution when they desire chastity, in order that ye may make a gain in the goods of this life, but if anyone compels them, Yet, after such compulsion, is Allah Oft-Forgiving, Most Merciful (to them). (24: 33)
9. And those who annoy believing men and women undeservedly, bear (on themselves) a calumny and a glaring sin. (33: 58)
10. O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested: And Allah is Oft-Forgiving, Most Merciful. (33: 59)

II - AHADITH OF THE PROPHET

The Traditions of the Prophet (PBUH) of Islam regarding the protection of women's honour and chastity are as under:-

1. Jaber reported from the Prophet who said: Don't visit women whose husbands are absent, because devil runs through you like the circulation of blood. (Tirmizi)
2. Wael-b-Hujr reported that a woman was forced to commit adultery at the time of the Prophet. Then he cancelled the ordained punishment from her and enforced it against one who compelled her. He did not mention whether he fixed for her any dower. (Tirmizi)
3. Wael-b-Hujr reported that a woman came out at the time of the Prophet intending to say prayer. A man forced her and dragged her and satisfied his lust with her. She raised a cry but he went away. She passed by a host of refugees and said: verily that man did with me such and such. They overtook him and came with him to the Messenger of Allah. He said to her: Go back because Allah has forgiven you, and he said about the man who had sexual intercourse with her: Stone him to death. (Tirmizi, Abu Daud)
4. Abdullah-b-Masud reported that the Messenger of Allah said to us: O Youngmen, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford he should observe fast, for it is a means of controlling sexual desire. (Muslim)
5. Abu Sa'id Al-Khudri reported that Allah's Messenger said: The most wicked among the people in the sight of Allah on the Day of Judgement is the man who goes to his wife and she comes to him, and then he divulges her secret. (Muslim)
6. Jaber reported that Abdullah-b-Ubayy-b-Salul had two slave girls; one was called Musaika and the other one was called Umaima and he compelled them to prostitution. They made a complaint about this to Allah's Messenger and it was upon this that this verse was revealed: "And compel not your slave girls to prostitution" up to the words: "Allah is Forgiving, Merciful." (Q 24 : 33). (Muslim)

III - RIGHTS IN THE LIGHT OF QUR'AN AND HADITH

Measures taken by the Qur'an and Sunnah for the protection of the honour of woman are:-

1. *Zina* or fornication or adultery has been declared a major sin and an evil way. The believers are strictly forbidden to come near it. The Qur'an says: "Nor come nigh to adultery for it is a shameful (deed) and an evil, opening the road (to other evils). (17 : 32)

Zina has been declared a punishable offence and the *Hadd* (punishment prescribed) for it is very strict. The person guilty of adultery is to be punished with a hundred lashes (Al-Qur'an 24 : 2). Woman if subjected to rape is not to be punished but the man who criminally assaulted her is to be punished with *Hadd*.

2. Persons who accuse the chaste women of adultery and do not prove the charge by producing four witnesses, are to be punished with eighty stripes (Al-Qur'an 24 : 4). This is known as *Hadd of Qazaf*.
3. Persons guilty of slandering the believing and virtuous women, have not only been condemned and cursed in this world and the Hereafter but also would be awarded suitable punishment in the next world (Al-Qur'an 24 : 23). Again the Qur'an condemns such persons who malign believing women falsely. (33 : 58)
4. Both men and women have been instructed to lower their gaze and preserve their modesty. (Al-Qur'an 24 : 30-31)
5. The women are forbidden to display their adornment except that which is displayed of itself unintentionally. (Al-Qur'an 24 : 31)
6. Women are enjoined to cover their bosoms with gowns or outer-garments. (Al-Qur'an 24 : 31)
7. Women are forbidden to reveal their adornment or make-up except before their husbands or near relatives (*Mahrams*) or servants. (Al-Qur'an 24 : 31)

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8. Women are also directed to dress up properly and wrap themselves with outer-garments, cloak or gown (Al-Qur'an 33:59). This is called *pardah*.

9. Prostitution was banned and it was declared that even the slave girls should not be forced to whoredom, (Al-Qur'an 24:33) not to speak of the free and respectable women.

10. The people have been instructed not to enter the houses of others without permission (Al-Qur'an 24: 27).

11. Protection of honour of a chaste woman is so dear to the religion of Allah that sometimes miracles have happened to rescue the chaste believing females who had been wrongly and falsely charged by the enemies of humanity. 'Ayesha, wife of Muhammad (PBUH) was falsely charged of unchastity by the hypocrites, and God Himself spoke to vindicate her honour (please refer to verses 11 to 20 of chapter 24 of Al-Qur'an). Mary (mother of Jesus PBUH) was wrongly accused of being unchaste by her own people, and Allah caused a miracle to happen when a child from the cradle (Jesus PBUH) suddenly spoke and gave evidence of her noble character (please refer to verses 16 to 35 of chapter 19 of the Qur'an).

CHAPTER 18

EXEMPTIONS FROM CERTAIN OBLIGATIONS

I - VERSES OF THE QUR'AN

The women have been granted certain concessions and exemptions from some religious duties and family obligations. Relevant verses of the Holy Book are:-

1. (Fasting) for a fixed number of days; but if any of you is ill, or on a journey, the prescribed number (should be made up) from days later. For those who can do it (with hardship), is a ransom, the feeding of one, that is indigent. But he that will give more, of his own free-will — it is better for him, and it is better for you, that ye fast, if ye only knew. (2 : 184)
2. They ask thee concerning women's courses. Say: They are a hurt and a pollution: so keep away from women in their courses, and do not approach them until they are clean. But when they have purified themselves, ye may approach them in any manner, time, or place ordained for you by Allah. For Allah loves those who turn to Him constantly and He loves those who keep themselves pure and clean. (2 : 222)
3. In it are signs manifest; (for example), the Station of Abraham; whoever enters it attains security; pilgrimage thereto is a duty men owe to Allah, — those who can afford the journey; but if any deny faith, Allah stands not in need of any of His creatures. (3 : 97)
4. O ye who believe! when the call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the Remembrance of Allah, and leave off business (and traffic): that is best for you if ye but knew! (62 : 9)

II - AHADITH OF THE PROPHET

Ahadith of the Holy Prophet (PBUH) on this subject are:

1. Mu'azah Al-Adawiyyah reported that she asked 'Ayesha: what is the order for a menstruating woman who fulfills her past fast but does not fulfil her prayer? 'Ayesha said: That affected us and we were ordered to fulfil past fast while we were not ordered to fulfil past prayer. (Muslim)
2. Anas-b-Malek al Ka'bi reported that the Apostle of Allah said: Allah has put down half the prayer from a traveller and fast from a traveller and from a suckling woman and from a pregnant woman. (Abu Daud, Tirmizi, Nisai and Ibn Majah)
3. Ayesha reported: We came out with the Prophet. We did not talk except without *Hajj*. When we came to Saraf, I perceived menstruation. The Prophet came while I was weeping. He said: Perhaps you are menstruating. "Yes" replied I. He said that is a thing which Allah ordained for the daughters of Adam. So do what a pilgrim does without going round the House till you become pure. (Bukhari, Muslim)
4. Tariq-b-Shahab reported that the Messenger of Allah said: *Jumu'ah* is a duty binding upon every Muslim in congregation except upon four: slave, woman, boy or sick man. (Abu Daud)
5. Ibn Umar reported that the Messenger of Allah said: Don't prevent your women from going to the mosques, and their houses are better for them. (Abu Daud)
6. Ibn Abbas reported: It was revealed to the Messenger of Allah: Your wives are a tilth for you. So come to your tilth as you like.and guard against menstruation. (Ibn Majah, Tirmizi)
7. 'Ayesha reported: I asked: O, Messenger of Allah! Is there any *Jihad* for women? "Yes" replied he, "there is for them *Jihad* wherein there is no fighting - *Hajj* and *Umrah*. (Ibn Majah)

8. Ibn 'Abbas reported: The people were commanded (by the Holy Prophet) to perform the last circumambulation round the House, but menstruating women were exempted. (Muslim)

III - CONCESSIONS GIVEN BY QUR'AN AND HADITH

Islam enjoins upon every Muslim man and woman to perform the basic religious obligations like prayer, *Zakat*, *Hajj* and Fast. However, the Qur'an and *Sunnah* have given certain concessions to the women in matters of performance of these religious obligations in certain situations.

1. A menstruating woman is exempted from prayer during her period of impurity.
2. A woman during her menstruation period is exempted from fasting in the month of *Ramadan*, though she has to fast the same number of days afterwards.
3. A suckling woman and a pregnant woman can benefit from the concession given to sick from fasting by the Qur'an vide verse 184 of chapter 2.
4. During menses a woman is not obliged to perform certain rituals of *Hajj* like *Tawaf* (circumambulation of the House).
5. *Jumu'ah* (Friday) prayer is obligatory for the man but not for the woman. It is optional for her.
6. It is optional for the woman to say her prayers in the mosque or in her house.
7. In case of foreign invasion, it is the duty of every healthy male Muslim adult to participate in *Jihad* for defence of the Islamic state. But it is not obligatory for a Muslim woman to participate in *Jihad*.
8. During her menses, a woman is also exempted from performance of her marital obligations.

CHAPTER 19

RIGHT TO PARTICIPATE IN SOCIO-POLITICAL LIFE

I - VERSES OF THE QUR'AN

The performance of religious obligations like prayer, fasting, *Hajj*, etc. are equally binding on the women as on the man. The Prophet (PBUH) used to take their *Ba'iat* also. Relevant verses are:

1. And be steadfast in prayer; practise regular charity; and bow down your heads with those who bow down (in worship). (2 : 43)
2. In it are Signs manifest; (for example), the Station of Abraham; whoever enters it attains security; Pilgrimage thereto is a duty men owe to Allah, - those who can afford the journey; but if any deny faith, Allah stands not in need of any of His creatures. (3 : 97)
3. The Believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey Allah and His apostle. On them will Allah pour His mercy: for Allah is Exalted in power, Wise. (9 : 71)
4. Say to the believing men that they should lower their gaze and guard their modesty: that will make for greater purity for them: and Allah is well acquainted with all that they do. And say to the believing women that they should lower their gaze and guard their modesty; (24 : 30-31)
5. Those who hearken to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation; who spend out of what We bestow on them for Sustenance; (42 : 38)

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6. O Prophet! when believing women come to thee to take the oath of fealty to thee, that they will not associate in worship any other thing whatever with Allah, that they will not steal, that they will not commit adultery (or fornication), that they will not kill their children, that they will not utter slander, intentionally forging falsehood, and that they will not disobey thee in any just matter, — then do thou receive their fealty, and pray to Allah for the forgiveness (of their sins): for Allah is Oft-Forgiving, Most Merciful. (60 : 12)

II - AHADITH OF THE PROPHET

Ahadith of the Prophet (Allah's peace be upon him) regarding the *Bai'at* of women, their participation in public worship and their interest in socio-religious festivals are as follows:-

1. It has been narrated on the authority of 'A'isha, the wife of the Holy Prophet (may peace be upon him). She said: When the believing women migrated (to Medina) and came to the Messenger of Allah (may peace be upon him), they would be tested in accordance with the following words of Allah, the Almighty and Exalted: "O Prophet, when believing women come to thee to take the oath of fealty to thee that they will not associate in worship anything with God, that they will not steal, that they will not commit adultery ... " to the end of the verse (60 : 12).

Whoso from the believing women accepted these conditions and agreed to abide by them were considered to have offered themselves for swearing fealty. When they had (formally) declared their resolve to do so, the Messenger of Allah (may peace be upon him) would say to them: You may go. I have confirmed your fealty. By God, the hand of the Messenger of Allah (may peace be upon him) never touched the hand of a woman. He would take the oath of fealty from them by oral declaration. By God, the Messenger of Allah (may peace be upon him) never took any vow from women except that which God had ordered him to take, and his palm

never touched the palm of a woman. When he had taken their vow, he would tell them that he had taken the oath from them orally. (Muslim)

2. It has been narrated on the authority of 'Urwa that 'A'isha described to him the way the Holy Prophet (may peace be upon him) took the oath of fealty from women. She said: The Messenger of Allah (may peace be upon him) never touched a woman with his hand. He would only take a vow from her, and when he had taken the (verbal) vow, he would say: You may go. I have accepted your fealty. (Muslim)

3. Ibn Umar reported that the Messenger of Allah said: When the wife of one of you seeks permission to go to the mosque, he must not prevent her. (Bukhari, Muslim)

4. Zainab, wife of Abdullah-b-Mas'ud reported: The Apostle of Allah said to us: When one of you is present in the mosque, let her not touch perfume. (Muslim)

5. Ibn Umar reported that the Messenger of Allah said: Don't prevent your women from (going to) the mosques, and their houses are better for them. (Abu Daud)

6. Tariq-b-Shehab reported that the Messenger of Allah said: *Jumu'ah* is a duty binding upon every Muslim in congregation except upon four: slave, woman, boy or sick man. (Abu Daud)

7. A woman of Banu Abdal-As'hal reported: I asked: O Messenger of Allah! verily there is a rotten way for us to go to the mosque. So how shall we proceed when rain will overtake us? He asked: Is there no way better than this? 'Yes', replied I. Then the latter is (to be preferred) to the former. (Abu Daud)

8. Umme Atiyya reported: The Messenger of Allah commanded us to bring out on *Id-ul-Fitr* and *Id-ul-Adha* young women, menstruating women and *purdah*-observing ladies, menstruating women kept back from prayer, but participated in goodness and supplication of the Muslims. I said: Messenger of Allah, one of us does not have an outer

garment. He said: Let her sister cover her with her outer garment. (Muslim)

9. Jarir-b-Abdullah reported: I asked the Prophet about glance at a strange woman. He ordered me to turn away my glance. (Muslim)

10. Ibn Abbas was asked: Were you with the Prophet in an I'd prayer? 'Yes', said he, the Messenger of Allah came out, prayed and then delivered sermon. He did not mention about *Azan* or *Aqamat*. Afterwards, he came to the women, gave them admonition, reminded them (of Allah) and enjoined them to give alms. Then I saw them putting their hands to their ears and necks, throwing off (ornaments) to Bilal. (Bukhari, Muslim)

III - WOMAN'S PARTICIPATION IN SOCIO-POLITICAL LIFE

In the light of the Qur'an and *Sunnah*, the rights of a muslim woman to participate in public worship and socio-political life of the Muslim *Ummah* are discussed below:-

1. "Establish worship, pay the poor - due and bow your heads with those who bow (in worship)" - (Al-Qur'an 2:43). Again, the Qur'an says: "... And pilgrimage to the House is a duty unto Allah for mankind, for him who can find a way thither ... " (3:97). In both these verses, the address of the Qur'an is both to the Muslim men and the Muslim women. Performance of religious obligations like prayer, *Zakat*, pilgrimage and fasting is equally binding on every Muslim. Though the women have been given an option to establish their prayer in their houses, yet they are not forbidden to participate in I'd prayer, in Friday prayer or in daily prayers which are established in the mosques or other public places. I'd and Friday prayers are specially established in the bigger mosques or public places of worship and attract large gatherings. In addition to performance of a religious ritual, these gatherings are socially very important and every

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Muslim, man or woman, has right to participate in these gatherings. In early Islam, such meetings were utilized to discuss and decide the issues of common interest which had a bearing on the social or political life of the Muslim community. The Muslim women were encouraged to participate in these gatherings along with the men.

Similarly pilgrimage or *Hajj* is also a very important annual meeting of the Muslim *Ummah*, in which they not only perform a religious ritual but also meet each other and discuss the matters of mutual interest. The *Hajj* has been traditionally and historically the largest annual gathering of the Muslim Community carrying a good deal of social significance in addition to being a religious festival. To perform *Hajj* is as much a duty of a woman as that of man.

2. According to verse 71 of chapter 9 of the Qur'an, the Muslim men and women are friends and helpers of each other. They are severally and jointly responsible for enjoining the right and forbidding the wrong, and for establishing worship and paying *Zakat*. To cooperate with each other for the good of the community and to protect their common interests, is the duty of Muslim men and women. They can form political or social organisations for protection of their religious, social and political rights and for promotion and advancement of Islamic values regarding socio-economic and legal justice.

3. One of the attributes of the believers, according to the Qur'an (42:38) is that their affairs are a matter of counsel. This verse is very important in the socio-political life of Islam. It is of a great constitutional significance and has laid down the foundations of Islamic democracy. According to the Qur'an, the believers are to decide their matters with mutual consultation and no autocrat or dictator or despot has the authority to decide for them or impose his decision on them. The believers, men as well as women, have equal rights to participate, to discuss and decide their matters regarding social, public and political issues. In the matters where the Prophet of Islam did not receive any guidance from Allah

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through revelation, he used to consult his companions. Matters regarding *Jihad*, social or political life of the community were decided with mutual consultations by the Prophet (may Allah's peace be upon him). Men and women both were consulted and many such incidents have been reported in the compilations of Ahadith and books of Islamic history. When the Treaty of Hudaibiyah was signed with the Quraish and the depressed and disappointed companions were reluctant to sacrifice their animals, the Prophet (PBUH) consulted his wife Umme Salamah. On her advice, he offered his own sacrifice which had a salutary effect and adduced the response of the companions who followed suit. Once Hadrat Umar wanted to fix the maximum amount of dower, but he dropped the idea on the advice of a woman who drew the attention of the caliph to verse 20 of chapter 4 of the Qur'an. The righteous Caliphs used to consult the wives of the Prophet (peace be upon him) and other eminent female scholars on many important issues of public interest.

This idea of mutual consultation led to the establishment of *Shura* or consultative body in the early days of Islam and right of vote, election of representatives, establishment of parliaments and election of the heads of Islamic republics in modern times. The women have equal rights with the men to elect their representatives and contest elections and seek for public offices.

4. In verse 12 of chapter 60 of the Qur'an, the Almighty Allah has instructed the Prophet of Islam to take oath of allegiance (*Bai'at*) from the Muslim women. According to Marmaduke Pickthal, "It was the oath exacted from men also until the second pact of Al-Aqabah when the duty of defence was added to the men's oath." Oath of allegiance or *Bai'at* in the Islamic state is not only a solemn promise on the part of every Muslim man or woman to uphold the Islamic values like belief in the unity of God, performance of acts of worship, abstinence from evils like stealing, adultery, telling lie, killing children, disobeying the Prophet, etc. but also a declaration on his or her part to remain loyal to the Muslim community and

Islamic state through thick and thin and to protect it against internal disruption or external invasion. Muslim woman being equal citizen of the Islamic state has equal obligations and consequently equal rights with man. So the idea of Bai'at not only imposes certain liabilities on the citizens, men or women, but also confers reciprocal rights on them. If the idea is developed further and taken in the modern sense, it would include the right of vote, right of representation, right to elect the public representatives, head of the state and government and to participate in socio-political activities of the state. So, from the idea of Mutual Consultation (Al-Qur'an 42:38) and significance of *Bai'at* propounded by the Qur'an, we can safely conclude that the Qur'an vests the viceroyalty of God on earth in all the human beings, men and women, equally and gives equal rights to all the believers in the exercise of Sovereignty of God on earth. The Qur'an thus conferred such political and constitutional rights on its followers, both men and women, like franchise and right to participate in the state affairs, which have been obtained by the western and non-muslim people after a lot of struggle against their despotic monarchs.

5. The Qur'an prescribes a code of conduct for the believing men and women when they come in each other's presence and when they meet each other. This has been done with a view to avert the possible evils which generally come up in the community as a result of free mixing of the men and women. So, some hard and fast rules of behaviour have been laid down. In its verses 30 and 31 of chapter 24, the Qur'an Commands the believers to lower their gaze and to be modest. In the verse 31 of chapter 24 and 59 of chapter 33, the Muslim women have been ordered to fulfil certain additional responsibilities regarding dress, *purdah* and keeping modesty. They have been forbidden to display their adornment except that which is apparent and over which they have got no control. They have also been instructed to dress up properly and cover their heads and bosoms with cloaks or sheets or outer-garments when they come out of their homes. These

verses donot order to shut the women in their homes like prisoners as some of the people suppose. Neither the women in the Muslim community have been secluded or segregated nor forbidden to come out of their houses. They can participate in all the religious and social gatherings provided they observe the commands regarding dress and *purdah*. The verses 30 and 31 of chapter 24 rather pre-suppose that the women would come out of their houses and hence the command to the men and women to lower their gaze and be modest.

IV - VIEWS OF RENOWNED SCHOLARS

1. Encyclopaedia of Seerah writes: "This incident fully reflects the temperament, nature and attitude of *Islam*. The Prophet is praying for the participation of a woman in *jihad*, even though *jihad* is not obligatory on her; and in a *jihad* which is overseas, demanding all kinds of sacrifices and extreme patience against very heavy odds. This shows that *Islam* does not want woman to be totally excluded from collective social activities and never to come out of her own circle of activities. Its intention is that whenever there is a need and demand for her services in any field and there is sufficient talent and willingness available among them, society can make use of them in those areas where they are most suitable and effective in increasing the overall efficiency of the community without damaging the fundamental principle of *Al-Din*."

At another place, the Encyclopaedia says: "Besides, there is sufficient historical evidence that women did assemble occasionally for their various needs and sometimes even presented their problems to the Prophet and received replies from him. On some occasions, they sent their representative to the Prophet to present their case. (*Bukhari, Kitab al-Istihsan*).

The famous case of Asma bint Zaid, already described, when she presented the problems of women to the Prophet, and the covenant that he took from women when they accepted Islam are examples which indicate that women did

sometimes present their collective problems to the Prophet and received satisfactory answers from him."

2. In his book, *'The Spirit of Islam'*, Syed Ameer Ali writes about the position of woman in an Islamic society as under:- "In the early centuries of Islam, almost until the extinction of the Saracenic empire in the East, women continued to occupy as exalted a position as in modern society. Zubaida, the wife of Harun, plays a conspicuous part in the history of the age, and by her virtues, as well as by her accomplishments, leaves an honored name to posterity. Humaida, the wife of Faruk, a Medinite citizen, left for many years the sole guardian of her minor son, educates him to become one of the most distinguished jurisconsults of the day. *Sukaina, or Sakina*, the daughter of Husain, and the grand-daughter of Ali, was the most brilliant, most accomplished, and most virtuous woman of her time, - "la dame des dames de son temps, la plus belle, la plus gracieuse, la plus brillante de qualites." as Perron calls her. Herself no mean scholar, she prized the converse of learned and pious people. The ladies of the Prophet's family were noted for their learning, their virtues, and their strength of character. Buran, the wife of the Caliph Mamun, Umm-ul-Fazl, Mamun's sister, married to the eighth Imam of the house of Ali, Umm ul-Habib, Mamun's daughter, were all famous for their scholarship. In the fifth century of the *Hegira*, the *Sheikha Shuhda*, designated *Fakhr un-nisa* ("the glory of women"), lectured publicly, at the Cathedral Mosque of Bagdad, to large audiences on literature, rhetoric, and poetry. She occupies in the annals of Islam a position of equality with the most distinguished *'ulama*. What would have befallen this lady had she flourished among the fellow-religionists of St. Cyril can be judged by the fate of Hypatia. Possibly she would not have been torn to pieces by enthusiastic Christians, but she would, to a certainty, have been burnt as a witch. Zat ul-Hemma, corrupted into Zemma, "the lion-heart," heroine of many battles, fought side by side with the bravest knights."

"He draws the comparative picture of a Christian woman of those days as follows:-

"In the early ages, when the religion of the people, high and low, the ignorant and educated, consisted only of the adoration of the mother of Jesus, the Church of Christ had placed the sex under a ban. Father after father had written upon the enormities of women, their evil tendencies, their inconceivable malignity. Tertullian represented the general feeling in a book in which he described women as "the devil's gateway, the unsealer of the forbidden tree, the deserter of the divine law, the destroyer of God's image—man." Another authority declared with a revolting cynicism, "among women he sought for chastity but found none." Chrysostom, who is recognised as a saint of high merit, "interpreted the general opinion of the Fathers," says Lecky, "when he pronounced women to be a necessary evil, a natural temptation, a desirable calamity, a domestic peril, a deadly fascination, a painted ill." The orthodox Church excluded women from the exercise of all religious functions excepting the lowliest. They were excluded absolutely from society; they were prohibited from appearing in public, from going to feasts or banquets. They were directed to *remain in seclusion*, to observe silence, to obey their husbands, and to apply themselves to weaving and spinning and cooking. If they ever went out they were to be clothed from head to foot. Such was the position of women in Christianity when Mariolatry was recognised and practised by all classes."

CHAPTER 20

IS WOMAN EQUAL TO MAN?

I - VERSES OF THE QUR'AN

Those who contend that a woman is equal to man in the matter of rights and obligations, quote the following verses of the Qur'an in their support:-

1. And be steadfast in prayer and regular in charity: and whatever good ye send forth for your souls before you, ye shall find it with Allah: for Allah sees well all that ye do. (2: 110)
2. O ye who believe! the law of equality is prescribed to you in cases of murder: The free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude; this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty. (2: 178)
3. O ye who believe! fasting is prescribed to you as it was prescribed to those before you, that ye may (learn) Self-restraint. (2: 183)
4. In it are Signs Manifest: (for example), the Station of Abraham; whoever enters it attains security; Pilgrimage thereto is a duty men owe to Allah, - those who can afford the journey; but if any deny faith, Allah stands not in need of any of His creatures. (3: 97)
5. O mankind! reverence your Guardian-Lord, Who created you from a single person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women:- reverence Allah, through Whom ye demand your

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mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you. (4: 1)

6. O ye who believe! Believe in Allah and His apostle, and the scripture which He hath sent to His apostle and the scripture which He sent to those before (him). And who denieth Allah, His angels, His Books, His apostles, and the Day of Judgment, hath gone far, far astray. (4: 136)
7. As to the thief, male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted in Power. (5: 38)
8. Whoever works righteousness, man or woman, and has Faith, verily, to him will We give a new Life, a life that is good and pure, and We will bestow on such their reward according to the best of their actions. (16: 97)
9. The woman and the man guilty of adultery or fornication,- flog each of them with a hundred stripes; let not compassion move you in their case, in a matter Prescribed by Allah, if ye believe in Allah and the Last Day: And let a party of the believers witness their punishment. (24: 2)
10. For Muslim men and women,— for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise,- for them has Allah prepared forgiveness and great reward. (33: 35)
11. O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things). (49: 13)
12. And of everything We have created pairs: that ye may receive instruction. (51: 49)

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Those who argue that a woman is not equal to a man, produce the following verses of the Qur'an in their support:-

1. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise. (2: 228)
2. And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. (2: 282)
3. If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess. That will be more suitable, to prevent you from doing injustice. (4: 3)
4. Allah (thus) directs you as regards your children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. (4: 11)
5. Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means... (4: 34)

II - AHADITH OF THE PROPHET

The Traditions of the Prophet of Islam regarding the equality of man and woman in the matter of rights and obligations and their equality in criminal and civil law, are quoted below:-

1. Abu Bakr reported that the Messenger of Allah wrote to the inhabitants of Yemen and there was in his letter: whoso kills a believer unjustly will suffer retaliation for what his hand has done unless the relatives of the murdered man consent otherwise. And therein it was: A man shall be killed for (the murder of) a woman. And therein it was: For (the

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murder of) a life, there is a blood-wit of 100 camels, 1000 dinars on the owner of gold. (Nisai, Darimi)

2. Anas reported that the Messenger of Allah said: Search for knowledge is compulsory upon every Muslim male and female. (Ibn Majah)
3. Umar-b-al-Khattab reported ... the Messenger of Allah said: "Islam is - that you attest that there is no deity but Allah and that Muhammad (P.B.U.H) is the Messenger of Allah, that you keep up prayer, pay poor-due, keep fast of *Ramazan* and make pilgrimage of the House provided you have means of making journey to it. (Muslim)
4. Jaber-b-Abdullah reported that the Messenger of Allah said: Fear Allah regarding women ... you have got rights over them that they entertain nobody to your beds which you dislike ... they have got rights over you in respect of their food and clothing according to means. (Bukhari and Muslim)
5. Abu Saeed Al Khudri reported that the Prophet of Allah came out for I'dul Adha or I'dul-Fitr towards the praying place and passed by some women. He said; O Assembly of women, give alms and verily I see majority of you as the inmates of hell. They asked: O Messenger of Allah, for what? He said: You often take to curse and are ungrateful to companions. What I see from one of you about defect of wisdom and of religion in comparison with the wisdom of a wise man is a proof. They asked: And what is the defect in our religion and intelligence, O Messenger of Allah? He said: Is not the attestation of a woman like half of the attestation of a man? Yes, they said: And that is on account of her short intelligence. He said: Does she not, when she menstruates, desist from praying and fasting? Yes, said they. He said: That is on account of her defect in religion. (Bukhari, Muslim)

III - ARGUMENTS FOR AND AGAINST

The question of equality between man and woman has been debated from time immemorial and the controversy still goes

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on. Some people argue that they are equal to man while some other contend that they are not equal.

Arguments of those who claim that men and women are equal, are:

1. Man and woman both come from the same stock. God has created all of us from a single soul. Adam was created first and from him was created Eve and from this pair of human beings was created a multitude of men and women (Al-Qur'an 4:1). Since the men and women have been created from the same parents, they are equal as human beings. Neither is a man superior to woman, nor is a woman superior to man. God has created everything in pairs. Man and woman are pair of the same species. They are *zauj* or spouses of each other. They are two complementary parts of humanity and thus none is superior or inferior.
2. Both man and woman are equally required to perform their religious obligations like belief in God and His Messenger, prayer, *zakat*, fasting and pilgrimage. When the Qur'an says: "Establish worship and pay the poor-due ..." (2:110), it addresses both the man and the woman. Again, the Qur'an says: "And pilgrimage to the House is a duty unto Allah for mankind ..." (3:97). In this verse also both man and woman have been required to perform *Hajj*. Fasting is also obligatory for the believers, men as well as women (Al-Qur'an 2:183). In verse 136 of chapter 4, the Qur'an addresses the believers, men as well as women, to believe in Allah and His Messenger and the Scripture which He has revealed unto His Messenger. ... So in the matters of religious obligations both man and woman are equal and none is superior or inferior to the other.
3. In case of crime, there is no discrimination and the punishment for one offence is the same for man and woman, e.g., theft (Al-Qur'an 5:38), adultery (Al-Qur'an 24:2), etc.
4. In the matter of *Qisas* (retaliation) man and woman are equal. If a man kills a woman, he would be killed in retaliation. Similarly if a woman kills a man, she would be

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killed in retaliation (Al-Qur'an 2:178 and 5:45). Similarly in the matter of *diyyat* there is no distinction between a male and a female.

5. Reward for good deeds is the same for the male as well as for the female (Al-Qur'an 16:97)
6. In the matter of rights, man and woman are equal (al-Qur'an 2:228). the Qur'an says: "And they (women) have rights similar to those (of men) over them ..." we have already discussed a lot regarding the rights of woman in different fields of life.
7. All human beings are equal. The Qur'an does not discriminate between them on the basis of sex, race, language, colour or place etc. However, in the sight of Allah the noblest of them, will be the man or woman, who is the best in conduct - (Al-Qur'an 49:13)

Those who hold that the woman is not equal to man produce the following arguments:

1. Though the women have same rights as those of men, yet the men are superior to the women. The Qur'an says: "And they (women) have rights similar to those (of men) over them in kindness, and men are a degree above them". (2:228)
2. According to verse 282 of chapter 2 of the Qur'an, the evidence of two women is equal to that of one man. Thus, they argue, that the man is superior to the woman.
3. It is argued that the man is permitted to contract marriages with four women at a time (Al-Qur'an 4:3) while the woman has not been given this right of contracting multiple marriages. So on the basis of this argument they claim that the woman is inferior to man.
4. In the laws of inheritance laws, the man's share is double that of woman generally in the same category. Thus they refer to the verses 11, 12 and 176 of Surah 4 of the Qur'an and argue that the man is superior.

5. According to verse 34 of Surah 4, the man is *Qawwam* of the woman and it is argued that he is, therefore, superior to her. However this argument is not sound and it does not justify the conclusion which is drawn. The verse itself explains the reason why man has been called *Qawwam* (care-taker) over woman. It is because the man earns bread for the family and spends his wealth for the maintenance of woman. This verse in fact demarcates duties and fields of activities between the man and the woman and lays down the responsibility of earning livelihood for the family on the shoulders of the man and running household as the duty of the woman.

If we thoroughly examine and weigh the arguments advanced by both the parties in favour of and against the proposition, we can conclude that these arguments are not relevant. In most of the matters, man and woman are equal particularly in the matter of rights and obligations. But in certain other matters they are unequal because nature has ordained different spheres of activities for them. Thus we can sum up the discussion in these words: Where the roles assigned to the man and woman by nature are different, the man and woman would be unequal to each other; but where there is no inconsistency between their roles and they are being judged as the members of the same species having similar rights and obligations, they are perfectly equal.

IV - VIEWS OF RENOWNED SCHOLARS

1. Dr. Hamidullah, in his famous work, "Introduction to Islam", writes:

"To avoid redundancy, Nature has not willed a perfect equality among the two sexes, but a complementary distribution of avocations and functions. For instance, it will not be possible for man to conceive a baby; similarly the natural attributes of men cannot be exercised by women. She has a more delicate physical constitution, affecting even the weight of her brain and bones, and she will have a taste more in conformity with the need of the conservation of this

delicacy. More robust, man will have greater strength and therefore more endowed to engage in the more painful parts of life. To each will be according to his (or her) requirements, both natural and reasonable.

If there is a certain natural inequality between the two sexes, in many other aspects of life they resemble each other. Therefore their rights and obligations in these domains will also be similar.

This sums up, in a way, the Islamic teachings on woman: She is considered equal to man in certain respects and not so in certain others. This could be understood better in the description of her obligations and her rights."

2. Encyclopaedia of Seerah says: "Islam recognises biological and physiological differences between the two sexes and the consequent differences in the nature and areas of their activities and functions in practical life. It determines their functions, their place and their duties in the social system on the basis of these differences."

It further says at another place: "Islam recognises woman as an equal and full partner to man in their matrimonial relationship. Man is the father and the bread-winner and woman is the mother and the manager of the household and the role of both is equally essential for the successful working of the family life, fundamental and primary root of human civilisation."

About the equality of man and woman in criminal and civil laws and also about the privileges of women in certain obligations the Encyclopaedia of Seerah says: "A woman enjoys perfect equality with man in so far as civil and penal laws are concerned. In the eyes of the law, both sexes are equal and are treated alike, the same legal penalties being imposed on both men and women for breaking any moral, civil or criminal laws. Both enjoy equal rights and privileges as members of the Islamic society. In civil law, women lead exactly the same life, with the same rights and obligations as

men. However, women enjoy certain privileges and exemptions because of their physiological and biological functions. They are exempt from some religious duties such as daily prayer and annual fasting in the month of *Ramadan* during menstrual periods and during confinement and are permanently exempt from obligatory congregational Friday prayer."

3. "Whatever the rights women have obtained through demonstrations, strikes and other weapons of persuasion are still far short of the standard set by the Holy Prophet fourteen hundred years ago. "The woman is still inferior in Western eyes as she was in the past ages of ignorance."

In the West, a real genuine woman has yet to have respect as the queen of a home, the wife of a husband, the mother of children. The so-called respect that she enjoys today is, in fact, for being a he-woman or a she-man who is physiologically a woman, but mentally a man and who pursues masculine activities in life. Obviously, this respect is for manhood, not for womanhood." (Encyclopaedia of Seerah)

It may, however, be pointed out that although woman, as a human being occupies equal status with man and is treated as equal, and enjoys equal rights, privileges etc., the fact remains that there is a differences between the sexes. No amount of debating or discussion, physical exercise or hard, industrial work can change her sex. As a woman, her special function in life is different from that of a man and she is naturally equipped with a different physical, physiological, biological, and even psychological structure. Islam has taken these natural differences between the sexes into account in differentiating roles and allotting functions to each sex. Therefore to talk of absolute equality between men and women is complete nonsense. Their general equality as human beings is quite natural and reasonable because men and women are two complementary parts of humanity proceeding from common parents. But to assign them equal or similar functions in life is preposterous because it is physically impossible to interchange their functions, eg., men sharing in

conception, birth, suckling, etc. Islam has therefore given due allowance to these factors and treated men and women on the basis of equality where there is a natural scope for it, and differentiated between them where such differentiation is in accordance with nature. (Syed Muhammad Qutb: Islam the Misunderstood Religion quoted by Encyclopaedia of Seerah.)

CHAPTER 21

CAN A WOMAN RULE?

I - VERSES OF THE QUR'AN

Those who oppose the above proposition and contend that a woman is not permitted by Islam to become the head of state or chief executive, produce the following verses of the Holy Qur'an in their support:-

1. Behold, thy Lord said to the angels: "I will create a vicegerent on earth." They said, "Wilt thou place therein one who will make mischief therein and shed blood?- whilst we do celebrate Thy praises and glorify Thy holy (name)?" He said: "I know what ye know not." (2 : 30)
2. And behold, We said to the angels, "Bow down to Adam"; and they bowed down: Not so Iblis: he refused and was haughty: He was of those who reject Faith. (2 : 34)
3. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (Of advantage) over them. And Allah is Exalted in Power, Wise. (2 : 228)
4. And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. (2 : 282)
5. Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. (4:34)
6. It is He Who created you from a single person, and made his mate of like nature. in order that he might dwell with her

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(in love) When they are united, she bears a light burden and carries it about (unnoticed). When she grows heavy, they both pray to Allah their Lord, (saying): "If Thou givest us a goodly child, we vow we shall (ever) be grateful." (7 : 189)

7. Before thee, also the apostles We sent were but men, to whom We granted inspiration: if ye realise this not, ask of those who possess the Message. (21 : 7)

8. And stay quietly in your houses, and make not a dazzling display, like that of the former Times of Ignorance; and establish regular prayer and give regular charity; and obey Allah and His Apostle. And Allah only wishes to remove all abomination from you, ye Members of the Family, and to make you pure and spotless. (33 : 33)

9. O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested: And Allah is Oft-Forgiving, Most Merciful. (33 : 59)

10. Is then one brought up among trinkets, and unable to give a clear account in a dispute (to be associated with Allah)? (43 : 18)

Those who support the proposition and contend that a woman can become the head of a Muslim state or chief executive, refer to the following verses of the Holy Qur'an:-

1. And remember that Abraham was tried by his Lord, with certain Commands, which he fulfilled: He said: "I will make thee an Imam to the Nations." He pleaded: "And also (Imams) from my offspring!" He answered: "But My Promise is not within the reach of evil doers." (2 : 124)
2. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise. (2 : 228)
3. O mankind! reverence your Guardian-Lord Who created you from a single person, created, of like nature, his mate,

and from them twain scattered (like seeds) countless men and women:- reverence Allah, through Whom ye demand your mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you. (4: 1)

4. And in no wise covet those things in which Allah hath bestowed His gifts more freely on some of you than on others: to men is allotted what they earn, and to women what they earn: but ask Allah of His bounty; for Allah hath full knowledge of all things. (4: 32)

5. The believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey Allah and His apostle, on them will Allah pour His mercy: for Allah is exalted in Power, Wise. (9: 71)

6. (They are) those who, if We establish them in the land, establish regular prayer and give regular charity, enjoin the right and forbid wrong: with Allah rests the end (and decision) of (all) affairs. (22: 24)

7. (The queen) said: "Ye chiefs! Here is—delivered to me—a letter worthy of respect. "It is from Solomon, and is (as follows): "In the name of Allah, Most Gracious, Most Merciful: "Be ye not arrogant against me but come to me in submission to the true Religion."

She said: "Ye chiefs! Advise me in (this) my affair: no affair have I decided except in your presence." They said: "We are endued with strength, and given to vehement war: but the command is with thee; so consider what thou wilt command." She said: "King, when they enter a country, despoil it, and make the noblest of its people its meanest: thus do they behave. "But I am going to send him a present, and (wait) to see with what (answer) return (my) ambassadors." (27: 29-35)

8. He said: "Transform her throne out of all recognition by her: Let us see whether she is guided (to the truth) or is one of those who receive no guidance." So when she arrived, she was asked, "Is this thy throne?" She said, "It was just like this: and

knowledge was bestowed on us in advance of this, and we have submitted to Allah (in Islam)," and he diverted her from the worship of others besides Allah: for she was (sprung) of a people that had no faith. She was asked to enter that lofty Palace: but when she saw it, she thought it was a lake of water, and she (tucked up her skirts), uncovering her legs. He said: "This is but a palace paved smooth with slabs of glass." She said: "O my Lord!" I have indeed wronged my soul: I do (now) submit (in Islam), with Solomon, to the Lord of the Worlds." (27: 41-44)

9. Those who hearken to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation; who spend out of what We bestow on them for sustenance. (42: 38)

II - AHADITH OF THE PROPHET

Ahadith of the Prophet (P.B.U.H.) of Islam relevant to the subject are:-

1. Abu Bakrah reported: when it reached the Prophet that the Persians had enthroned a daughter of the Chosroe as queen over them, he said; never shall a people prosper who appoints a woman to conduct their affairs. (Bukhari)

2. Abu Hurairah reported that the Messenger of Allah said: "When your rich are pious, your wealthy are generous and your affairs are governed by mutual consultation, the surface of earth is better for you than its crust; but when your rich are bad, your wealthy are miser and your affairs are conducted by women, the crust of the earth is better for you than its surface." (Tirmizi - poor)

3. Abu Saeed Al Khudri reported that the Apostle of Allah came out for 'Id-ul-Azha or 'Id-ul-Fitr towards the praying place and passed by some women. He said: O Assembly of women, give alms and verily I see majority of you as the inmates of Hell. They asked: O Messenger of Allah, for what? He said: You often take to curse and are ungrateful to

and from them twain scattered (like seeds) countless men and women:- reverence Allah, through Whom ye demand your mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you. (4 : 1)

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companions. What I see from one of you about defect of wisdom and religion in comparison with the wisdom of a wise man is a proof. They asked: And what is the defect in our religion and intelligence, O Messenger of Allah? He said: Is not the attestation of a woman like half of the attestation of a man? Yes, they said: And that is on account of her short intelligence. He said: Does she not, when she menstruates, desist from praying and fasting? Yes, said they. He said: That is on account of her defect in religion. (Bukhari, Muslim).

III - ARGUMENTS FOR AND AGAINST

Let us examine the arguments of both the sides before we reach some conclusion. Those who oppose the rule of woman give the following arguments from the Qur'an and Hadith.

1. It was Adam, the man and not the woman whom Allah placed as viceroy in the earth. (Al-Qur'an 2 : 30) Since the man has been made viceroy, how a woman can rule? — is the argument.
2. It was Adam, the man, before whom the Angels prostrated at the command of Allah (Al-Qur'an 2 : 34). So it is argued that the Angels prostrated before the man, how a woman can rule over him?
3. Though the women have similar rights as men, yet the men are a degree above them (Al-Qur'an 2:228). Hence the argument is: since the man is superior to woman, she cannot rule over him.
4. Evidence of two women is equal to the evidence of one man (Al-Qur'an 2 : 282), so the argument is that the woman who is half of man, how she can rule over him?
5. Men have been declared as *Qawwam* (in charge of) of women and, according to some who translate the word *Qawwam* as ruler, they are rulers of women. (Al-Qur'an 4:34). The man is the head of the family while a woman enjoys a secondary position. So it is argued that a woman who cannot

become even head of the family in the presence of a man, how she can become head of the state or the nation?

6. By referring to Al-Qur'an (7:189) some argue that the function of women is to console the man and produce and bring up children and not to aspire for political offices.
7. God has sent only men as prophets for guidance of humanity (Al-Qur'an 21:7). Since a woman has not been made Prophet, she cannot be ruler either.
8. The women have been instructed to stay in their houses (Al-Qur'an 33 : 33). One who cannot come out of her house except in the case of very essential need, then how can she be permitted to assume the responsibilities of the head of state which require full time engagements out of her home.
9. The women have been directed to observe *purdah* when they come out of their houses (Al-Qur'an 33:59). When a woman cannot come out of her house before the strangers without observing *purdah*, how she can hold political offices, specially the office of the head of state which requires frequent meetings with the men, not only from one's own country but also with foreigners.
10. The woman is brought up in ornaments and in dispute cannot make herself plain (Al-Qur'an 43:19). From this they argue that a woman is weak by nature. She is very delicate and is brought up in fineries and ornaments and lacks logical reasoning and sound argumentation. Therefore, she renders herself to be incapable of ruling.
11. The Prophet of Islam, when he heard that the Persians had made the daughter of Kisra ruler over them, said: "Never shall a people prosper who make a woman their ruler"- (Bukhari). According to another Tradition, the Prophet of Islam called the women deficient in wisdom and religion (Hadith reported in Bukhari and Muslim).

Those who say that a woman can rule advance the following arguments.

1. The Qur'an has not prohibited the rule of woman anywhere. Not to speak of prohibiting or condemning it in clear-cut words in the direct manner, the Qur'an has not even uttered a single word in disapproving or disavowing it. Had it been unlawful or *haram*, as the orthodox say, there would have been certainly revealed a verse declaring it so. When the Qur'an has not overlooked even minor issues while laying down the rules and regulations governing the conduct of an individual in the family and society, how it could overlook such an important and vital issue like the rule of woman if it is *haram* and adversely affects the progress and welfare of humanity. The silence of Qur'an on this crucial issue means that the Muslim community has been left to decide it according to the circumstances and according to their best interest.

2. It has been related in the Qur'an (2:124) that God was pleased with Prophet Abraham and appointed him a leader for mankind. In response to the question of the Prophet whether there would be leaders from his offspring also, God said that there would be leaders from his offspring but the wrongdoers from them would not be appointed leaders. Had the leadership of women been unlawful, God would have certainly said, "My promise does not include wrongdoers and women," instead of saying, "My promise includes not wrongdoers."

3. The women have rights similar to those of the men (Al-Qur'an 2 : 228). If the man has the right to become head of state or government, why can't a woman aspire for this office?

4. The story of a woman ruler, the Queen of Sheba, has been related by the Qur'an in its chapter 27. From the description of the Qur'an, we come to notice that

- a) Her rule was not that of an autocrat. She had a very good quality of consulting others on all important affairs of the state (a quality which was lacking in most of the male rulers of her times).

- b) She was a very wise woman and her sound opinion could not be ignored. See how she convinces her chieftains to come to terms with (Prophet) Solomon.
- c) Like a true statesman, she was against war and loved peace. Instead of agreeing with her war lords, she advances very sound arguments against the war. Thus a decision is taken to start negotiations rather than going to war. Perhaps a chauvinist would not have adopted this course of action.
- d) Prophet Solomon tested her judgement by miraculously producing her throne but in a disguised form and she recognised it.
- e) And on top of all that she accepts Islam when she meets the Prophet and sees the light despite the fact that she was the ruler of a disbelieving nation and had lived all her life among the polytheists and idolators.

5. The Qur'an has not talked of the rule of the Queen of Sheba with disapproval and condemnation or denunciation. Rather her habit of consulting others before taking decision on vital issues, her peace-loving temperament, her wisdom and sound judgment, and her readiness to accept Islam at once rather than persisting in disbelief, have found special mention in the Qur'an.

6. There is almost a consensus of opinion among the jurists and scholars of Islam that the functions of an Islamic state have been outlined by the Qur'an in its verse 41 of chapter 22. These functions include establishing of prayer, paying of *zakat*, and enjoining good and forbidding wrong. These very functions have been again mentioned in the verse 71 of chapter 9 of the Qur'an and the responsibility of discharging these functions has been laid on both the Muslim men and women.

7. It is also held unanimously that verse 38 of chapter 42 of the Holy Qur'an provides the foundations of Islamic democracy

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when it lays down: "...and whose affairs are a matter of counsel..." If this verse is considered along with the verse preceding it and subsequent to it, we can easily understand that the Qur'an is mentioning the virtues of the believers, both male and female. One of these virtues is that they decide their affairs by mutual consultation. History is witness to many incidents when the Prophet (P.B.U.H.) himself consulted the believers before taking a decision. On some occasions he consulted the women also. At Hudeybia he consulted his wife Umme Salamah and made an important decision.

From this it is evident that a woman can be a counsel. Since in a democratic government (and the system of government in Islam is democracy), the ruler is one of the counsels and conducts the affairs of the state in consultation, the modern scholars and the liberal thinkers infer that a woman can also become a ruler.

8. To support their contention, they also argue that Hadrat 'Ayesha, the wife of the Prophet (may Allah's peace be on him), commanded the troops and participated in the 'Battle of the Camel' in order to get the *Qisas* of the murder of Hadrat Usman the third righteous Caliph.

9. The supporters of the women's rule do not accept the Hadith pertaining to daughter of Kisra as authentic since its reporter Abu Bakra was found guilty of false evidence and was punished by Hadrat Umar. The other Hadith regarding a woman's deficiency in wisdom and religion is not accepted being in contradiction with the teachings of the Qur'an and the Prophet (P.B.U.H.) of Islam about women.

IV - VIEWS OF EMINENT SCHOLARS

Now some views of the scholars are quoted for and against the rule of woman.

1. Encyclopaedia of Seerah says: "That a woman is not only physically weak and mentally emotional, tender, sensitive and delicate, but is also under great strain for a few days every

month during menstruation. Then she has periods of physiological as well as psychological strain during pregnancy, birth and suckling. She is naturally most suited for the job of childbearing, and their nursing, training and education. The chief office of the state needs qualifications and qualities quite opposed to the natural endowments of a woman. Islam has therefore advised against entrusting the chief executive post of the leadership (*imamat*) of the nation to a woman for these very reasons, and not because of any feeling of hatred or contempt for her." It further says: "Muslim scholars have summed up the qualifications necessary for a candidate for leadership in these words: he has independent judgement (of a *mujtahid*) in the fundamentals and details of *Din*, so as to satisfy people of every opinion; he has a deep and penetrating vision of human problems and is fully acquainted with the strategies of war and peace, as otherwise, he will not be able to solve the multifarious problems facing *Din* and the *Millat*; and he should be a man of great determination and courage, so that no power can obstruct him in the fulfilment of his duties.

Obviously, these qualities are more often found in men than in women; and even then in very few men."

2. Maulana Ashraf Ali Thanvi, a leading scholar of the Islamic world, gave a *Fatwa* in favour of the rule of Shahjahan Begum, the queen of Bhopal. The Maulana states that if the government is democratic and the affairs of the state are being conducted by the ruler with the help of elected representatives and in consultation with them, then there is no bar against the woman becoming the head of state or government. He argues that in such a situation the woman ruler is in fact one of the counsels and the woman is eligible for counselship because the Prophet of Islam consulted Umme Salamah at Hudeybia and acted upon her advice. To justify his view, the Maulana has relied on the reference of the Qur'an about the rule of Queen of Sheba.

3. Head of a leading religious and political party, Maulana Abul Ala Maududi, one of the greatest scholars of the modern

when it lays down: "...and whose affairs are a matter of counsel..." If this verse is considered along with the verse preceding it and subsequent to it, we can easily understand that the Qur'an is mentioning the virtues of the believers, both male and female. One of these virtues is that they decide their affairs by mutual consultation. History is witness to many incidents when the Prophet (P.B.U.H.) himself consulted the believers before taking a decision. On some occasions he consulted the women also. At Hudeybia he consulted his wife Umme Salamah and made an important decision.

From this it is evident that a woman can be a counsel. Since in a democratic government (and the system of government in Islam is democracy), the ruler is one of the counsels and conducts the affairs of the state in consultation, the modern scholars and the liberal thinkers infer that a woman can also become a ruler.

8. To support their contention, they also argue that Hadrat 'Ayesha, the wife of the Prophet (may Allah's peace be on him), commanded the troops and participated in the 'Battle of the Camel' in order to get the *Qisas* of the murder of Hadrat Usman the third righteous Caliph.

9. The supporters of the women's rule do not accept the Hadith pertaining to daughter of Kisra as authentic since its reporter Abu Bakra was found guilty of false evidence and was punished by Hadrat Umar. The other Hadith regarding a woman's deficiency in wisdom and religion is not accepted being in contradiction with the teachings of the Qur'an and the Prophet (P.B.U.H.) of Islam about women.

IV - VIEWS OF EMINENT SCHOLARS

Now some views of the scholars are quoted for and against the rule of woman.

1. Encyclopaedia of Seerah says: "That a woman is not only physically weak and mentally emotional, tender, sensitive and delicate, but is also under great strain for a few days every

month during menstruation. Then she has periods of physiological as well as psychological strain during pregnancy, birth and suckling. She is naturally most suited for the job of childbearing, and their nursing, training and education. The chief office of the state needs qualifications and qualities quite opposed to the natural endowments of a woman. Islam has therefore advised against entrusting the chief executive post of the leadership (*imamat*) of the nation to a woman for these very reasons, and not because of any feeling of hatred or contempt for her." It further says: "*Muslim* scholars have summed up the qualifications necessary for a candidate for leadership in these words: he has independent judgement (of a *mujtahid*) in the fundamentals and details of *Din*, so as to satisfy people of every opinion; he has a deep and penetrating vision of human problems and is fully acquainted with the strategies of war and peace, as otherwise, he will not be able to solve the multifarious problems facing *Din* and the *Millat*; and he should be a man of great determination and courage, so that no power can obstruct him in the fulfilment of his duties.

Obviously, these qualities are more often found in men than in women; and even then in very few men."

2. Maulana Ashraf Ali Thanvi, a leading scholar of the Islamic world, gave a *Fatwa* in favour of the rule of Shahjahan Begum, the queen of Bhopal. The Maulana states that if the government is democratic and the affairs of the state are being conducted by the ruler with the help of elected representatives and in consultation with them, then there is no bar against the woman becoming the head of state or government. He argues that in such a situation the woman ruler is in fact one of the counsels and the woman is eligible for counselship because the Prophet of Islam consulted Umme Salamah at Hudeybia and acted upon her advice. To justify his view, the Maulana has relied on the reference of the Qur'an about the rule of Queen of Sheba.

3. Head of a leading religious and political party, Maulana Abul Ala Maududi, one of the greatest scholars of the modern

Muslim world, favoured the candidature of a woman against a man for the Presidentship of Pakistan in the elections of 1964. It was argued that if one is confronted with a dilemma to choose between two evils, one must choose the lesser one. Another argument which was advanced to justify the action of the Maulana was: If on one side there is a woman possessing all the merits except that she is a woman and on the other side there is a man having all the demerits except that he is a man, you should support the woman in such a situation.

4. Professor Rafiullah Shehab, in his book '*Mansab-e-Hukoomat aur Musalman Aurat*', quotes besides others the following authorities to support his contention that a Muslim woman can become head of state:-

- a) Muhammad-bin-Jarir Al Tabari, one of the early commentators of Islam, gave the verdict (*Fatwa*) that a Muslim woman is eligible for all the offices in an Islamic state.
- b). Imam Malik, the founder of Maliki school of Islamic *Fiqh* is reported to have opined that a woman can head the state in all its affairs.
- c). Sheikh-ul-Islam Allama Khair-ud-Din Ramli has justified the rule of woman by the application of Doctrine of Necessity.

V - DISCUSSION AND CONCLUSION

If we make a thorough examination and critical appreciation of the arguments advanced by both the parties, people who are opposed to women's rule and people who support women's rule, we come to notice that none of these two parties has been able to carry their point. Arguments given in favour of the proposition and arguments given against the proposition are by and large indirect and generally not relevant. Arguments of both the parties, given by them from the Qur'an and *Sunnah*, neither prove the proposition nor disprove it. These arguments simply bring home the fact that

man and woman are equal in some matters while in some other they are not equal as nature has intended different fields of activity for them. In fact there is no verse or injunction in the Holy Qur'an which directly and clearly either permits the rule of woman or prohibits her rule. Similarly there is no *Hadith* or injunction of the Prophet (peace be upon him) which can be quoted to establish that the Holy Prophet either allowed the woman to become head of state and government or disallowed and forbade her to assume such responsibilities. The Tradition of the Prophet Muhammad (Allah's peace be upon him) about Kisra's daughter who was enthroned by the Persians, is believed by many to be unreliable and unauthentic as the reporter of this Tradition was convicted and punished in a case of *Hudood* and his evidence is not dependable. Thus we can safely and without fear of contradiction conclude that the Qur'an and *Sunnah* neither permit nor forbid the woman's rule.

The silence of the Qur'an and Hadith on this very important and vital issue is not without wisdom and sagacity. This deliberate silence means that Islam has given full freedom and discretion to the Muslim *Ummah* to decide this matter according to the ever changing socio-political circumstances. Since the socio-economic and political environments change with the passage of time effecting the human needs and necessities, no permanent injunctions laying down any hard and fast rules regarding the choice of the ruler or his sex, colour, race, language or other qualifications have been enunciated by the Qur'an and *Sunnah*. The choice has been left open to the Muslim community to decide according to their needs in the prevailing circumstances as to who should be their *Amir* or chief. Islam favours the form of government by consultation which in the modern *jargon* is called democratic form of government. In this form of government the people are free to elect anybody who, they feel, would be able to discharge the responsibilities of the highest office of the chief executive or head of state. The ruler in Islam is not a despot, autocrat or dictator. He is to rule in consultation with

others. So the ruler may be a man or a woman, he or she is to discharge duties of the office with the consultation and advice of the elected representatives of the people.

The Qur'an condemns in open and unambiguous terms the rule of Pharaoh of Egypt who was a man, but it does not express even a slight disapproval of the rule of the Queen of Sheba who was a woman. So it is not the sex of the ruler which is important, but it is in fact the nature and spirit of the rule which is significant. Circumstances may arise for the Muslim *Ummah* when the benevolent and democratic rule of a woman like Queen of Sheba may be preferable to the despotic and tyrannical rule of a man like Pharaoh of Egypt. Pages of history bear witness to the fact that women became rulers in the Muslim world like Razia daughter of Sultan Iltutmash in India, in thirteenth century. Shajrat-ul-Darr daughter of King Najam-ud-Din in Egypt in thirteenth century, Chand Bibi in southern part of India in 16th century, Sutt-ul-Mulk daughter of caliph Al-Aziz Billah in Egypt in 11th Century A.D. and Queen Shahjahan Begum of Bhopal in India in early 20th century. Their rule was never opposed by any of the well known *ulema* of their age, neither any of the contemporary jurists, scholars or leading *ulema* gave a *Fatwa* declaring their rule *Haram* (unlawful) on the basis of their sex. On the other hand, some *ulema* gave *Fatwas* to justify their rule, e.g., in case of Queen of Bhopal, Maulana Ashraf Ali Thanvi gave a *Fatwa* favouring her rule. However, we can easily find many examples in history when the scholars of Islam and the *ulema* vehemently opposed some male rulers because of their tyrannical and despotic rule. Only recently we have seen in Pakistan that most of the leading *ulema* supported the candidature of a woman for the highest post of the President of Pakistan in the elections of 1964. Thus the Muslim *Ulema*, unlike the Jewish and Christian clergy, have never opposed any advancement of the Muslim *Ummah* in educational, scientific, cultural and socio-political fields.

STATUS OF WOMAN

I - VERSES OF AL-QUR'AN

Following verses of the Qur'an establish beyond any shadow of doubt that Islam gives very high status to the women:-

1. Permitted to you, on the night of the fasts, is the approach to your wives. They are your garments and ye are their garments. (2: 187)
2. Your wives are as a tilth unto you; so approach your tilth when or how ye will: But do some good act for your souls beforehand; and fear Allah, and know that ye are to meet Him (in the Hereafter) and give (these) good tidings to those who believe. (2: 223)
3. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise. (2: 228)
4. O mankind! reverence your Guardian-Lord, Who created you from a single person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women;- reverence Allah, through Whom ye demand your mutual (rights), and (reverence) the wombs (that bore you): for Allah ever watches over you. (4: 1)
5. From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, - a determinate share. (4: 7)
6. And in no wise covet those things in which Allah hath bestowed His gift more freely on some of you than on others: to men is allotted what they earn, and to women what they

STATUS OF WOMAN

earn: But ask Allah of His bounty: for Allah hath full knowledge of all things. (4 : 32)

7. Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. (4 : 34)

8. It is He Who created you from a single person, and made his mate of like nature, in order that he might dwell with her (in love). When they are united, she bears a light burden and carries it about (unnoticed). When she grows heavy, they both pray to Allah their Lord, (saying): "If Thou givest us a goodly child, we vow we shall (ever) be grateful." (7 : 189)

9. The Believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey Allah and His apostle. On them will Allah pour His mercy: for Allah is Exalted in Power, Wise. (9 : 71)

10. And Allah has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best: will they then believe in vain things, and be ungrateful for Allah's favours? (16 : 72)

11. Whoever works righteousness, man or woman, and has Faith, verily, to him will We give a new Life, a life that is good and pure, and we will bestow on such their reward, according to the best of their actions. (16 : 97)

12. And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): Verily in that are signs for those who reflect. (30 : 21)

13. And We have enjoined on man (to be good) to his parents: In travail upon travail did his mother bear him, and in years twain was his weaning; (hear the command), "Show gratitude to Me and to thy parents: to Me is (thy final) goal. (31:14)

WOMEN'S RIGHTS IN ISLAM

14. The Prophet is closer to the Believers than their own selves, and his wives are their mothers. (33 : 6)

15. For Muslim men and women, - for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise, - for them has Allah prepared forgiveness and great reward. (33 : 35)

16. O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things). (49:13)

17. And of everything We have created pairs: That ye may receive instruction. (51 : 49)

18. And Allah sets forth, as an example to those who believe, the wife of Pharaoh: Behold, she said: "O my Lord! build for me, in nearness to Thee, a mansion in the Garden, and save me from Pharaoh and his doings, and save me from those that do wrong", And Mary the daughter of 'Imran, who guarded her chastity; and We breathed into her (body) of Our spirit; and she testified to the truth of the words of her Lord and of His Revelations, and was one of the devout (servants). (66 : 11-12)

II - AHADITH OF THE PROPHET (P.B.U.H.)

Traditions of the Prophet of Islam about the status of women are quoted as under:-

1. Muawiyah-b-Ja'hemah reported that Ja'hemah came to the Messenger of Allah! I intend to join a battle and have come to you for consultation. He enquired: Have you got mother? 'Yes' replied he. He said: Then keep near her, because Paradise is at her feet. (Ahmad, Nisai, Baihaqi)

2. Bahaj-b-Hakim reported from his father who from his grandfather who had reported: I asked: O Messenger of Allah! who is to be most obeyed? He said: Your mother. I asked: who is next? He said: Your mother, I asked: who is next? He said: Your mother. I asked: who is next? He said: Your father; and then your nearer relations and then your near relations. (Tirmizi, Abu Daud)

3. Mugirah reported that the Messenger of Allah said; Allah made unlawful to you disobedience to mothers, burying live of daughters, and refusing help. And he disliked for you frivolous gossips, frequent questions and squandering property. (Bukhari, Muslim)

4. In his famous Farewell Address, delivered at Arafat on the occasion of his last pilgrimage in 10 A.H., the Prophet Muhammad (peace be upon him) declared: "Well then, people! verily there are rights in favour of your women which are incumbent upon you, and there are rights in favour of you which are incumbent upon them. As to what is incumbent upon them in your regard, is that they should not let your beds be trampled by others than you, should not allow those to enter your houses whom you do not like without your authorization, and should not commit turpitude. If they do commit that, then God has given you permission to reprimand them, to separate yourself from them in beds, and to strike them but not hard. If they abstain and obey you, then it is incumbent upon you to provide their food and dress in accordance with good custom. And I command you to treat women well, because they are like captives in your houses, possessing nothing for themselves, and you, on your part, take them as a deposit from God, and permit yourselves the enjoyment of their persons by means of a word of God. Have therefore the fear of God with regard to women, and I order you to treat them well. Attention! Have I communicated? O God, be witness!" (Ibn Hasham quoted by Dr. Hamidullah)

5. Hakim-b-Muawiyah from his father reported: I asked: O Messenger of Allah! what right has the wife of one among us

got over him? He said it is that you shall give her food when you have taken your food, that you shall clothe her when you have clothed yourself, that you shall not slap her on the face, nor revile (her), nor leave (her) alone except within the house. (Ahmad, Abu Daud, Ibn Majah)

6. Abu Hurairah reported that the Messenger of Allah said: The most perfect of the believers in faith is he who is the best of them in conduct, and the best of you are those who are the best to their wives. [Tirmizi (approved, correct)]

7. Anas reported that the Messenger of Allah said: When a woman says her five (prayers) and fasts her month, and guards her private parts, and obeys her husband, let her enter Paradise by whichever door she likes. (Abu Nayeem in Hilya)

8. Abu Omamah reported from the Messenger of Allah who used to say: Next to fear of Allah the believer finds nothing good for him than a virtuous wife. If he bids her, she obeys him; if he looks at her she gives him pleasure; if he gives her a promise, she fulfils it, and if he is absent from her, she guards herself and his property. (Ibn Majah)

9. "It is reported by Abdullah bin Umar that during the life-time of the Holy Prophet, the companions treated their wives most politely for fear that a Commandment concerning them might be revealed, and not until he had passed away did they begin talking with them freely." (Bukhari).

10. Anas reported that the Messenger of Allah said: Whoever maintains two girls till they attain maturity, he and I will come on the Resurrection Day like this: and he joined his fingers. (Muslim)

11. 'Ayesha reported: A woman came to me, while there were two of her daughters with her. She was begging of me, but found nothing from me except one date which I gave her. She divided it between her two daughters and she herself did take nothing out of it. Then she got up and went away. The Holy Prophet came and I informed him (of it). He said: Whoever suffers for any thing on account of these daughters and (still)

treats them with kindness, they will be a shield for him from hell. (Bukhari and Muslim)

12. Ibn Abbas reported that the Messenger of Allah said: If any body has got a female child, and then does neither bury her alive, nor treats her unjustly, nor prefers his children (meaning male children) to her, Allah will admit him in Paradise. (Abu Daud)

13. Ibn Abbas reported that the Holy Prophet said: "If one brings up three daughters or sisters, teaches them good manners and treats them kindly and lovingly till they no longer need his help, Allah will make Paradise obligatory for him." One man said: what if he has two? He replied. And he also, Ibn Abbas said that if the people had enquired about one, the Prophet would have said the same thing. (*Shariah Sunnah*)

III - HER STATUS IN THE LIGHT OF THE QUR'AN AND HADITH

1. Man and woman proceed from the same stock, they are the members of the same species and they are born of the same parents. The Qur'an says: "O Mankind! reverence your Guardian - Lord, Who created you from a single soul, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women-..." (4:1). God created Adam and from him created Eve and from this pair of human beings, He spread abroad a multitude of human beings. God has created everything in pairs (Al-Qur'an 51:49) and the man and woman form one pair among the creations of God. Man and woman are members of humankind and the Qur'an has invariably called them spouses of each other or helpmates and companions of each other. As human beings, man and woman are equal having the same human rights and obligations. Man and woman, when they are united, constitute a family. Man is the father and bread-winner of the family while woman is the mother and mistress of the house, managing the house and bringing up the children. Role of both is equally essential for the cause and advancement of humanity. Man and woman are

two complementary parts of humanity and in the absence of one of them, humanity is not complete. The roles of the man and woman are neither opposed to each other nor inferior or superior to each other, but are equally important and complementaries of one another.

2. Woman enjoys very high status of respect and honour in an Islamic society. As a wife she is the queen and mistress of the house. She manages the house and brings up and trains the children. She enjoys full and complete social, religious, cultural, legal and economic rights. She is entitled to receive dower and maintenance from her husband. She can own and manage her property and can also purchase or sell the property without the intervention of her husband. She can sue and can be sued and she can enter into contracts independently of her husband. In case of differences with her husband she can nominate an arbiter or can take the matter to the court. She can get divorce or can seek the dissolution of marriage in certain situations. Husband and wife are garments of each other being very near and close to each other. They are for mutual support, comfort and protection of each other. The Qur'an calls the wife as the tilth of the husband and thus lays down the responsibility of her protection and security on her husband. According to the Qur'an, the women have similar rights on men as the men have got over the women (Al-Qur'an 2 : 228). Thus she enjoys equal rights with her husband. (For details, please see chapter 2).

3. In the position of a mother, the woman enjoys a unique status of honour and esteem. She is the focus of attention for all the members of the family. In a Muslim home her opinions carry a lot of weight in all family matters. This is due to the teachings of Islam. The Qur'an ordains that the obedience to parents is next to obedience to God. When the Qur'an enjoins upon the believers to obey their parents, it especially mentions the services rendered by the mother (31:14) and thus indirectly places the position of the mother above that of the father. The Prophet of Islam (may Allah's peace be upon him), according to a well reported Tradition, declared in

unambiguous words that the best person for one's association and obedience is one's mother. According to another tradition, the Prophet (P.B.U.H.) declared that the paradise is under the feet of one's mother. As mother she enjoys many legal rights in addition to respect and obedience. She is entitled to receive share in inheritance from her children and is also entitled to receive maintenance from her children in certain situations. (For details, please see chapter 1)

4. The Qur'an in its verses (58 and 59 of chapter 16) draws a very vivid picture of the pagan Arabs on the birth of a female child. The birth of daughters was considered to be a bad omen in the family and a matter of great shame and insult. So the evil custom of burying alive of female children in infancy was common in certain tribes of the pagan Arabs. Islam not only abolished this criminal practice of killing the daughters but also enjoined upon the parents to accord the daughters equal treatment with their sons. The Prophet (P.B.U.H.) declared the act of bringing up of daughters and giving them good treatment to be a shield for the parents from hell. According to another tradition, the Prophet (P.B.U.H.) said that whoever brings up two daughters, treats them well and educates them, Allah will make paradise obligatory for him. As daughter, the female has got equal rights with the male children of her parents. She is entitled to maintenance and receives share in inheritance (please see chapter 3). Woman also enjoys respectable status in the position of sister in a Muslim home. She receives inheritance on the death of her brothers in certain circumstances. According to an authentic Tradition the Prophet declared whoever brings up two or more sisters and teaches them good manners, Allah makes paradise obligatory for him. (For details, please see chapter 4).

5. Islam has conferred the same religious, social, economic, legal and political rights and obligations on the woman as those which have been bestowed upon the man. Like man she is obliged to discharge all the duties placed upon her by the Islamic faith such as worship of one God, belief in God and His Messenger, prayer, *Zakat*, fasting and pilgrimage.

However on account of her nature and physical constitution, she has been given certain concessions in the fulfilment of certain religious obligations in some situations. She is exempt from *Jihad* and *Ju'muah* prayer in congregation in the mosque. During menstruation she is exempt from fasting, prayer and certain rituals in *Hajj*. Otherwise a man and woman are equal in the performance of religious duties.

Woman in Islam enjoys very wide legal rights. She has got rights of getting married as much as a man has got. She has full liberty to choose her partner in life. No marriage under Muslim Law can be solemnised without her consent. If she is forced into marriage, she can sue in a court of law for its dissolution. If she is married during her minority, she can exercise her option after attaining puberty and can repudiate the marriage. She is entitled to maintenance from her husband like food, clothing and lodgement. She enjoys absolute and unrestricted rights regarding dower or bridal gift which she is entitled to receive from her husband. It is interesting to note that the husband has got no such right to receive any obligatory gift from his wife. She can get divorce and can seek for dissolution of marriage in certain situations. Woman enjoys rights of property in Islam. She can acquire, own, possess and dispose of her property independently of her father or husband. Islam has bestowed upon her rights of inheritance in her various positions like wife, mother, daughter and sister after the death of her close relatives.

In the social and political field also, she enjoys many rights. She can participate in all the social, public and religious festivals and events after observing the rules of decency, modesty and proper dress. She can adopt any profession or legitimate source of earning income and can participate in the family welfare. She has as much rights for getting education as a man has got. She can participate in *Jihad* though it is not obligatory for her. In the political life of Muslim *Ummah* she can not only participate but also enjoys rights and obligations. The Qur'an prescribes the mode of her *Ba'iat* (allegiance to the Prophet P.B.U.H.). Female citizens of an Islamic state have

also got right of mutual consultation and of being consulted as the male citizens have. Islamic history bears evidence that the Prophet (P.B.U.H.) and the pious caliphs used to consult the women in many important matters. Enjoining good and forbidding wrong is an important political function of an Islamic state and the woman have also been enjoined by the Qur'an (9:71) to discharge this duty alongwith men. In the modern interpretation and construction of these concepts, she enjoys right of vote, right to contest for elections and right to seek for public offices.

6. The question of absolute equality between man and woman is a complete nonsense according to Islam. As discussed above, Islam confers equal rights on the women and men in various fields of life. As a human being woman enjoys equal status and equal rights with man. But in certain spheres of life, Islam makes distinction between a man and a woman and bestows different rights and obligations on them. It is not on account of any hatred or prejudice against any sex but due to the natural, biological and physiological differences between the sexes. Islam has taken these natural differences into account and has assigned distinct roles and functions to each sex. So Islam treats the man and woman as equal in most of the fields of human life, but it differentiates between them when there is natural scope for it. Otherwise as human beings, as complementary parts of humanity, as spouses of each other and as members of the same pair of human species, men and women are equal. The Qur'an says: "O Mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other. Verily the most honoured of you in the sight of Allah is he who is the most righteous of you" (49:13). Thus Islam does not make any distinction among the human beings on the basis of colour, race, sex, language, place of birth etc.

7. Islam has done indeed a great service to the humanity by emancipating the women from so many religious, moral, legal, social and political taboos. It has raised the status of woman and uplifted her to the honourable and respectable position of

a human being while she had been degraded to the position of a mere chattel and a piece of property. However, it is a great pity that many people particularly non-Muslim scholars have tried to belittle the importance of this great contribution of Islam. By referring to the verses of the Qur'an regarding the evidence of woman (2 : 282), woman's share in inheritance (4:11.12) permission of polygamy to man (4:3) and instructions regarding *purdah* (Al-Qur'an 24 : 31, 33 : 59), they try to establish that Islam has granted lesser legal rights to the woman in comparison with man and thus has given a lower status to the woman. These objections have been discussed at length in the relevant chapters of this book and have been rejected as nonsensical and ridiculous. To recapitulate we can briefly say that so far as woman's evidence is concerned, it is not equal to man only in cases of complicated commercial and mercantile transactions. Evidence is to be given by only one woman and the presence of the other woman is required to remind her if she forgets. (For details, see chapter 10). Her share in inheritance is generally equal to one half of that of man simply because Islam places the responsibility of earning livelihood for the family on the shoulders of man and absolves the woman of any such responsibility (For details, see chapter 9). So far as polygamy is concerned that had existed in the world from time immemorial and most often in its worst forms. It is Islam which restricted this practice by limiting number of wives at four and linking the permission with the equality of treatment and justice between the wives (for details, see chapter 11). No doubt some instructions have been issued to the women regarding observing of modesty and wearing of proper dress when they come out of their houses, but by doing so, Islam has not in any way restricted their movement or made them prisoners confined in their houses. Rather, Islam has taken these measures to protect their person and honour from men of loose character and eve-teasers. (For details, please see chapter 12).

V - STATUS OF WOMAN IN NON-MUSLIM NATIONS

Woman had practically no status and no rights in the non-Muslim nations of ancient and medieval times. Before the advent of Islam, the women were no better than animals or chattels. In many countries of the world they were generally regarded as slaves or at the best as domestic servants whose chief duty was to serve the men and please them by satisfying their sexual appetite. They had no rights or privileges in any sphere of life like social, economic, legal or political. They had no rights of inheritance, no rights of owning of property, no rights of earning livelihood, no rights in marriage, dower or divorce, not to speak of any political rights. They were treated like commercial goods and purchased and sold in open markets. For years together, the scholars and philosophers remained engaged in interesting debates over the issues like; whether a woman has got a soul? whether a woman is a human being? whether she possesses any entity? whether she has got any honour? whether she has some rights? etc. etc. Now let us study briefly the plight of woman in various leading civilizations and communities of the world.

1. Women in ideal Jewish society were viewed as wives and mothers. They managed the household and produced the children. Their contracts could be disallowed by their husbands or fathers. Women were responsible for the religious training of their children, yet had no public religious role. Polygamy and divorce were allowed. Men and women were punished for adultery, women more severely. Menstruating women were avoided as unclean. The word for wife, *beulah*, meant "owned" and the scriptures instructed the wife: "Thy desire shall be to thy husband, and he shall rule over thee."¹ The husband had proprietary rights over his wife. The property rights of the wife were limited. Her earnings and her property income belonged to her husband. In ancient Israel, a husband could divorce his wife at any time. Though dower was specified in the contract of marriage but was seldom

1. Encyclopedia Americana.

handed over to the wife for her use and enjoyment. The woman had got no right to demand divorce from her husband for any reason whatsoever.¹ In the matters of inheritance, daughters were excluded by sons and mothers inherited nothing from their children. Polygamy was common and Mosaic law did not impose any restrictions on the number of wives a Hebrew husband could have. A father had rights of selling his daughter during minority. Ten men were required in offering a public prayer and if there were nine men and lot of women, the prayer could not be offered as the women were counted to be non-entities. A woman was not to touch pickles, wine or soup if she was not ritually cleansed.²

2. Christian doctrine both praised women and blamed them for Adam's fall. Jesus welcomed women as well as men as followers. However, Saint Paul forbade them to preach or teach.³ Jesus Christ did not forbid polygamy. The canon law of the Christian church did not provide for divorce. Separation could be granted by the church only upon the proof of sufficiently serious grounds like adultery, extreme cruelty or heresy of one of the partners. Following views of some early Christian doctors throw light on the status of women in Christian society: (quoted by Syed Muzaffar-ud-Din Nadvi in his book *Human Rights and Obligations*)

"Woman is the organ of the Devil." — St. Bernard.

"Woman is the fountain of the arm of the Devil, her voice is the hissing of the serpent." — St. Antony.

"Woman is a scorpion, ever ready to sting. She is the lance of the Demon." — St. Bonaventure.

"Woman is the instrument which the Devil uses to gain possession of our souls." — St. Cyprian.

1. Ameer Ali.

2. Encyclopedia Britannica.

3. Encyclopedia Americana.

"Women is the gate of the Devil. The road of inequity, the sting of the scorpion." — St. Jerome.

"Woman is a daughter of Falsehood, a sentinel of Hell, the enemy of Peace; through her Adam lost Paradise." — St. John Damascene.

"Through woman the Devil has triumphed, through her Paradise has been lost; of all beasts, the most dangerous is woman." — St. John Chrysoston.

"Woman has the poison of an asp, the malice of a dragon." — St. Gregory, the Great.

3. Hindus in India absolutely gave no status to a woman. Under Hindu Law, wife was under complete subjugation of her husband who could seize her property at any time. Child marriage was the common practice and the minor had no right to repudiate such a marriage after attaining puberty. Sons excluded daughters from inheritance. Widows and other females had got no absolute rights in the estate left by the deceased relations. In the laws of inheritance, distinction was also made between self acquired and ancestral properties. Hindu Law considers the marriage as sacrament and makes no provision for its dissolution. In the early Hindu period, polygamy was in practice with no limit as to number of wives. A high caste Brahmin even today is allowed to have as many wives as he chooses.¹ A woman was considered as a source of sin and moral degradation. She addressed her husband as "My God". The law required the woman to be extremely obedient and submissive to her husband so much so that she should practically-worship him and in certain situations even die with him. Views of some Hindu law-givers about the status of woman are given as under: (quoted by Syed Muzaffar-ud-Din Nadvi in his book Human Rights and Obligations).

"A wife, a son and a slave are devoid of property. Whatever they acquire becomes his whose they are."
— Manu viii, 416.

1. Ameer Ali.

"A woman is never fit for independence." — Manu ix, 3.

"Women are devoid of the senses, and incompetent to inherit." — Baudhayan.

"Drums, peasants, the depressed animals and women — all these ought to be kept under iron sway" enjoins the Ramayan.

"There can be no friendship with women. Women's hearts are in fact the dens of wolves" — Rig Veda: 10, 95, 15.

"A woman's heart is devoid of self-control and fidelity, and in the balance of reason she weighs very light" — Rig Veda: 8, 13, 17.

4. In Rome, men who were citizens had public responsibilities and women were to bear children and manage household. Poor women found ways to add to the family income and peasant women worked in the fields. With the passage of time, Roman women gained the right to conduct their business and personal affairs themselves and also to attend public functions. Prostitution was common. Prostitutes had less restrictions, so some women got themselves registered as prostitutes in order to get freedom. Slave women were economically and sexually exploited.¹ The Romans gave power to the men of propertied class to divorce their wives. The husband simply presented his wife with a letter declaring their mutual release. But the wife had no right to sue for divorce.²

5. The Greeks considered the women inferior to men. They followed Aristotle's view that women should be passive, obedient and silent. Generally the women could only leave their homes to attend funerals and some religious celebrations. They had no control over the property they could own or

1. Encyclopedia Americana.

2. Encyclopedia Americana.

inherit. Wives were usually less educated and significantly younger to their husbands. Prostitution was common and slave women had a miserable plight.¹ The wife was a mere chattel marketable and transferable to others and subject of testamentary disposition. She was regarded as an indispensable evil for ordering of a household and procreation of children.² The husband could dismiss his wife for any cause. However the wife had no right to leave the house of her husband. She could only present her case to the court on grounds of cruelty and degenerate behaviour.³ The Greek women were always considered as minors and were expected to obey blindly their male kinsmen. A chaste woman was a precious thing. House of a prostitute became focuss of all attention which attracted all the classes of Greek society.

6. Status of woman in China was perhaps at the lowest ebb. The women were given the lowest position in society while they performed most of the menial jobs. Nobody was happy when a female child was born. So none wept for or mourned her death. Marriage was arranged by formal agreement between the heads of the families. After marriage, a woman passed on under the authority of her husband and his family. Any property brought by the bride, apart from her personal ornaments, was transferred to the ownership of her husband's family. The position of a bride was largely weak, but it strengthened with time more particularly after the birth of sons and performance of mourning for her husband's seniors.⁴

7. Among the pre-Islamic pagan Arabs, the wife had no *locus standi*. She was considered to be a mere chattel and was regarded to have no soul. The woman was treated like a very inferior creature. The Qur'an draws a very vivid picture of a pagan Arab on the birth of a daughter. When anyone of the pagans received the news of the birth of a female-child, his

1. Encyclopedia Americana.
2. Ameer Ali.
3. Encyclopedia Americana.
4. Encyclopedia Britannica.

face turned black and he started hiding himself from the people because of the 'sad news'. He asked himself: "Should I bear this insult and keep up with it or should I bury it alive?" So the evil practice of burying the female children alive was common among the pagan Arab tribes. Women, after the death of their husbands, were inherited by the sons like ordinary pieces of property. The power of divorce possessed by the husband was unrestricted and unlimited. They knew no rule of humanity in treating their wives. Under the laws of inheritance, succession was confined only to able male relations who could take up arms to defend the tribe against foreign aggression. Wives, mothers, sisters, daughters, minors, incapable, and infirm male heirs had no right in the estate of the deceased. Polygamy was common and prostitution was generally run through the slave girls.

V - FEMINIST MOVEMENTS AND WOMEN'S RIGHTS IN THE MODERN WORLD

Demands by women for equal rights and equal status with men and freedom to decide their own careers and life patterns have been a continual theme in western society for at least the last two hundred years. The American Revolution of 1776 and French Revolution of 1789 perhaps provided the philosophical basis to the western women for their own insurrections. Mary Wollstonecraft wrote "A vindication of the Rights of woman" is sharp reaction to the revolutionary French Declaration of the Rights of Man. Her book was published in 1792 in England and it challenged the idea that women exist only to please men and demanded equal treatment with men in education, work, politics etc.¹ This sparked off the Feminist movement in Britain which demanded the equal rights for women in education, employment, politics, besides woman's right to vote. First Woman's Suffrage Committee was formed in 1865 in Manchester. In 1867, a bill presented to parliament by John

1. Encyclopedia Britannica.

Stuart Mill was lost, 73 in favour and 196 against.¹ From 1876 onwards, the women suffrage societies and other feminist organisations had to make a lot of struggle through demonstrations, agitations, militant methods or violence to achieve their rights. However, not until the Married Women's Property Act of 1870 did British wives secure the right to own property. Not until 1918 were British women allowed to vote at the age of 30 and run for parliament in 1919. Not until 1928 did they get the right to vote on the same basis as men.

In the United States, the American Declaration of Independence was the model for the Declaration of sentiments drawn up by the first feminist convention, in Seneca Falls, N.Y., in 1848. Signed by 68 women and 32 men the Seneca Falls declaration stated: "We hold these truths to be self-evident: that all men and women are created equal... The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her..." The convention demanded for women the right of equal education and the right to preach, to teach, and to earn a livelihood. It also passed a resolution stating "that it is the sacred duty of the women of this country to secure to themselves their sacred right to the elective franchise." Thus was laid the foundation for the woman suffrage movement in the United States.²

National Woman Suffrage Association was formed in 1869 while in the same year another feminist organisation called American Woman Suffrage Association was established. These two organisations amalgamated in 1890 and started the movement for women's rights particularly the right to vote. However, the right to vote was long delayed - until 1920. The resistance to the women franchise can be judged from this very fact that Amendment to the American constitution, known as the Anthony Amendment, seeking for the women

1. Encyclopedia Americana.

2. Encyclopedia Americana.

equal rights of vote, was moved in 1878 which was defeated many times in the Congress until 1919 when it was passed by the Congress and was ratified by the States in 1920.

Elsewhere, especially in continental Europe, the situation was often even less progressive. French women did not receive the vote until 1944 and still remain, under the Napoleonic Code, severely restricted in property and other rights relative to men and husbands.¹

It would not be without interest to mention here the efforts made by the United Nations for the liberation and emancipation of women and for securing to them many sociopolitical rights in the modern world. The U.N. charter of 1945 was the first accepted international document that clearly defines equal rights for women. To implement the provisions of U.N. charter, the commission on the status of women was established. In 1948 the Universal Declaration of Human Rights was adopted by the United Nations. In 1952, U.N. General Assembly adopted convention on the Political Rights of women'. It provides that the women shall be entitled to vote in all elections and be eligible for election to all elected offices. The United Nations declared 1975 to be the International Women's year and established 1975-85 as the U.N. Decade for Women.

Movements for women's rights meet resistance in different countries in different shapes. In the beginning the political parties resisted it as they were uncertain of the effects of women's votes. The religious circles opposed their participation in anything that did not pertain directly to the home and rearing of children. Economic interests wanted to keep women as a voiceless labour-force.

Women today in most of the countries of the world can vote and be elected to public offices on the same basis as men. This has been achieved only after centuries of work, by

1. Encyclopedia Britannica.

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individuals and organisations. Whatever has been achieved by the woman in the modern world has been on account of the hectic struggle made sometimes through peaceful means but more often through agitations and violent ways. But Islam has given her more than that without even her asking for or demanding it.

VI - WOMAN SUFFRAGE

Right of vote has been given to the women in different countries of the world in the year indicated against each:

U.K.	1928	New Zealand	1893
U.S.A.	1920	Australia	1902
U.S.S.R	1917	Canada	1948
China	1947	India	1949
Japan	1945	Pakistan	1956
Germany	1919	Iran	1963
France	1944	Syria	1949
Italy	1945	Turkey	1934
Sweden	1919	Egypt	1956
Finland	1906	Tunisia	1959
Norway	1913	Indonesia	1949
Denmark	1915	Burma	1935
Spain	1931	Thailand	1932
		Ceylon	1934

VII - WOMAN IN PAKISTAN

The Constitution of the Islamic Republic of Pakistan, 1973, makes the following provisions in its various Articles for the uplift of the status of women and ensuring them rights in the socio-economic and political life of the nation.

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1. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest. (Article 23)

No distinction has been made by the above mentioned Article regarding the property rights of citizens on the basis of sex. Men and women have equal rights in this field.

2. (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children. (Article 25)

3. (1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.- (Article 26)

4. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex. (Article 27)

5. The State shall encourage local Government institutions composed of elected representatives of the areas concerned

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and in such institutions special representation will be given to peasants, workers and women. (Article 32)

6. Steps shall be taken to ensure full participation of women in all spheres of national life. - (Article 34)

7. The State shall protect the marriage, the family, the mother and the child. - (Article 35)

8. The State shall -

make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment;

prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements; - (Article 37)

9. The State shall -

(a) Secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;

(b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure;

(c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means;

(d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for

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all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment;

(e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan; - (Article 38)

10. Until the expiration of a period of ten years from the commencing day or the holding of the [third] general election to the National Assembly, whichever occurs later, [twenty seats] in addition to the number of seats referred to in clause (1) shall be reserved for women and allocated to the Provinces in accordance with the Constitution and law. - Article 51 (4)

Comments; 20 seats have been reserved for women in National Assembly of Pakistan by the above-mentioned Article.

11. The Constitution does not make distinction between man and woman regarding their political rights. So a woman in Pakistan has got right of vote and right to contest for representative offices.

CHAPTER 23

OBLIGATIONS OF WOMAN

I - VERSES OF THE QUR'AN

Obligations of the Muslim Woman have been highlighted by the Qur'an in its following verses:-

1. And be steadfast in prayers; practise regular charity; and bow down your heads with those who bow down (in worship). (2 : 43)
2. The mothers shall give suck to their offspring for two whole years. (2 : 233)
3. Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance): for Allah is Most High, Great (above you all). (4 : 34)
4. It is He Who created you from a single person, and made his mate of like nature, in order that he might dwell with her (in love). When they are united, she bears a light burden and carries it about (unnoticed). When she grows heavy, they both pray to Allah their Lord, (saying): "if Thou givest us a goodly child, we vow we shall (ever) be grateful." (7 : 189)
5. And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof: that they should draw their veils

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over their bosoms and not display their beauty except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers or their brother's sons, or their sisters' sons or their women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their foot in order to draw attention to their hidden ornaments. And O ye Believers! Turn ye all together towards Allah, that ye may attain bliss. (24 : 31)

6. O Prophet! when believing women come to thee to take the oath of fealty to thee, that they will not associate in worship any other thing whatever with Allah, that they will not steal, that they will not commit adultery (or fornication), that they will not kill their children, that they will not utter slander, intentionally forging falsehood, and that they will not disobey thee in any just matter, — then do thou receive their fealty, and pray to Allah for the forgiveness (of their sins): for Allah is oft-Forgiving, Most Merciful. (60 : 12)

II - AHADITH OF THE PROPHET

Ahadith of the Prophet (may Allah's peace be upon him) of Islam on the obligations and duties of Muslim woman are:-

1. Abu Omamah reported from the Messenger of Allah-who used to say: Next to fear of Allah the believer finds nothing good for him than a virtuous wife. If he bids her, she obeys him; if he looks at her she gives him pleasure; if he gives her a promise, she fulfils it, and if he is absent from her, she guards herself and his property. (Ibn Majah)
2. Jaber-b-Abdullah reported that the Messenger of Allah said: Fear Allah regarding women. Verily you have married them with trust of Allah and made their private parts lawful with the word of Allah. You have got (rights) over them that they entertain nobody to your beds which you dislike. If they do this, give them a beating without causing injury. They

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have got (rights) over you in respect of their food and clothing according to means. (Bukhari and Muslim)

3. Anas reported that the Messenger of Allah said: When a woman says her five (prayers) and fasts her month, and guards her private parts, and obeys her husband, let her enter Paradise by whichever door she likes. (Abu Nayeem in Hilya)

4. In his famous Farewell Address, delivered at Arafat on the occasion of last pilgrimage in 10 A.H., the Prophet Muhammad (peace be upon him) declared: "Well then, people! verily there are rights in favour of your women which are incumbent upon you, and there are rights in favour of you which are incumbent upon them. As to what is incumbent upon them in your regard, is that they should not let your beds be trampled by others than you, should not allow those to enter your houses whom you do not like without your authorization, and should not commit turpitude. If they do commit that, then God has given you permission to reprimand them, to separate yourself from them in beds, and to strike them but not hard. If they abstain and obey you, then it is incumbent upon you to provide their food and dress in accordance with good custom. And I command you to treat women well, because they are like captives in your houses, possessing nothing for themselves, and you, on your part, take them as a deposit from God, and permit yourselves the enjoyment of their persons by means of a word of God. Have therefore the fear of God with regard to women, and I order you to treat them well. Attention! Have I communicated? O God, be witness!" (Ibn Hasham quoted by Dr. Hamidullah)

5. Ayesha reported that Asma'a daughter of Abu-Bakr came to the Messenger of Allah while there were thin clothes on her. He approached her and said: O Asma'a! when a girl reaches the menstrual time, it is not proper that anything on her should remain exposed except this and this. He hinted on her face and palms. (Abu Daud)

6. Anas reported that the Messenger of Allah said: Search for knowledge is compulsory upon every Muslim male and Muslim female. (Ibn Majah)

7. Abu Hurairah reported that the Messenger of Allah was asked: Who among women is the best? He replied: she who gives pleasure to him (husband) when he looks, obeys him when he bids, and who does not oppose him regarding herself and her riches fearing his displeasure. (Nisai)

8. Abu Omamah reported that the Messenger of Allah said: There are three from whom their prayer and prayer-call are not accepted—a fugitive slave till he returns, a woman who passes the night while her husband is displeased with her, and a leader of a people while they do not like him. [Tirmizi (rare)]

III - OBLIGATIONS IN THE LIGHT OF QUR'AN AND HADITH

Rights of the human beings go along with their corresponding obligations. Since the rights of women in Islam have been discussed by us in the foregoing chapters, we would now focus on the obligations and duties which have been assigned to her by Islam. Briefly stated, following are some of the obligations which a Muslim woman is supposed to perform:-

1. Her first and foremost duty is, as is in the case of a Muslim male also, to worship God. She must believe in Allah alone and must not assign any partners to Him. She must also believe and attestify that Muhammad (may Allah's peace be upon him) is the Messenger of Allah. She is also duty-bound to perform all the religious obligations like prayer, *Zakat*, fasting and *Hajj*. She is obliged to lead her life in accordance with the teachings of Islam.

2. In addition to her duties to Allah and religion of Al-Islam, a Muslim woman is also obliged to perform certain duties towards her husband. The duty of the husband is to provide for the sustenance and livelihood for his wife and children, while the obligation of the wife is to manage the

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2. In addition to her duties to Allah and religion of Al-Islam, a Muslim woman is also obliged to perform certain duties towards her husband. The duty of the husband is to provide for the sustenance and livelihood for his wife and children, while the obligation of the wife is to manage the

household. In the absence of the husband, she must guard herself and her husband's property. She must be obedient to her husband and must be a source of love, affection, consolation, satisfaction and peace for her husband. Duties of the woman to her husband have been briefly referred to by the Qur'an in its verse No. 34 of chapter 4, while the Prophet of Islam in his Traditions has explained these duties in detail. According to the Prophet (P.B.U.H.), the best woman is she who gladdens her husband when he looks at her, obeys him when he bids her and does not oppose him regarding herself and her property. Again the Prophet of Islam said in respect of women that they should not let the beds of their husbands be trampled by others, should not commit turpitude and should not allow those to enter their houses whom their husbands do not like.

3. The most important duty of the woman is child-bearing and child-rearing. She is responsible for bringing up and training the children. Since the elementary education of the children depends upon the mother, a woman is required to get education, search for knowledge and acquire learning. She must train her children and teach them good manners. Her role in the character-building of the children is very important.

4. A woman must guard her modesty, keep chaste and should lower her gaze when she comes out of her house. She must not disclose her beauty and ornaments before strangers, must dress properly and cover herself. She can only keep her face and her hands exposed - (For details see the chapter on *Purdah*).



WOMEN'S RIGHTS IN ISLAM

BY
MUHAMMAD SHARIF CHAUDHURY